

NEW APPLICATION



0000148212

BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
CHAIRMAN

2013 SEP 20 P 4:45

GARY PIERCE
COMMISSIONER

AZ CORP COMMISSION
DOCKET CONTROL

BRENDA BURNS
COMMISSIONER

Arizona Corporation Commission

DOCKETED

SUSAN BITTER SMITH
COMMISSIONER

SEP 20 2013

BOB BURNS
COMMISSIONER

DOCKETED BY

NR

IN THE MATTER OF THE APPLICATION OF)
PRESIDIO TRAILS DEVELOPMENT, LLC)
FOR DELETION OF ITS PROJECT FROM)
THE CERTIFICATE OF CONVENIENCE AND)
NECESSITY HELD BY HALCYON ACRES)
ANNEX NO. 2 WATER COMPANY, INC.)

DOCKET NO. W-02312A-13-0326

APPLICATION FOR DELETION

Through undersigned counsel, Presidio Trails Development, LLC ("Applicant") requests that its project be deleted from the service area of the Certificate of Convenience and Necessity ("CC&N") held by Halcyon Acres Annex No. 2 Water Company, Inc. ("Halcyon"). As explained below, Halcyon is unable to serve the Applicant's project and Applicant has obtained assurance that the City of Tucson's ("City") municipal water utility, Tucson Water, will provide service if the project is deleted from Halcyon's CC&N.

I. Background

The Applicant is an Arizona limited liability company. It's business address is 15170 N. Hayden Road, Suite 1, Scottsdale, Arizona 85260; and its phone number is 480-998-5400. The name, address and telephone number of the Applicant's attorney is included in the signature block at the end of this pleading. The Applicant's management contact for

1 this application is Ross McCallister; 2910 N. Swan Road, Suite 204, Tucson, Arizona,
2 85712; 520-790-8100.

3 The Applicant's project is a 208 unit apartment complex on 9.24 acres of land at
4 9195 E. 21st Street in Tucson. A legal description of the project is attached as Exhibit A.
5 A map of Halcyon's certificated service area is attached as Exhibit B.

6 There are no present Halcyon customers within the area for which the Applicant is
7 requesting deletion.

8 Upon completion of the project, Halcyon will have no utility facilities within the
9 project area. One of Halcyon's distribution lines currently crosses the project site.
10 However, this line will need to be relocated as part of the construction of the project
11 regardless of the outcome of this Application.

12 **II. Reason for Deletion Request**

13 The Commission may delete a portion of a service area from a water company's
14 CC&N if there is an evidentiary showing that the water company is "unable or unwilling to
15 provide service" to the area in question. *James P. Paul Water Co. v. Ariz. Corp. Com'n*,
16 137 Ariz. 426, 431 (1983). As explained below, Halcyon is unable to provide domestic
17 water service to the Applicant's proposed development.

18 Halcyon cannot provide service to the Applicant's project because it would require
19 certain upgrades to Halcyon's well site. These upgrades would require zoning approval
20 from the City but on July 9, 2013, the Mayor and City Council denied Halcyon's request
21 for approval. A notice of this denial is attached as Exhibit C.

22 Under Arizona Department of Environmental Quality ("ADEQ") regulations,
23 Halcyon's existing well site lacks the pumping and storage capacity to serve the
24 Applicant's project. An engineering firm identified the well improvements needed to meet
25 ADEQ standards and this plan for the upgrade was approved by both Halcyon and the Pima
26

1 County Department of Environmental Quality, the local agency to whom approval authority
2 has been delegated by ADEQ.

3 Halcyon's existing well site is non-conforming under current City zoning regulations
4 governing minimum lot size and building set-backs and had not previously been approved
5 as a special exception land use ("SELU") under the current SR zone use regulations
6 applicable to the well site. As a result, the City determined in 2012 that it would be
7 necessary for Halcyon to obtain SELU approval for any well site upgrade and variances
8 from the City's Board of Adjustment (the "Board") from the minimum lot size and set back
9 requirements.

10 In April 2013, the City's Zoning Examiner approved Halcyon's SELU application
11 with conditions, and the Board approved the requested variances. However, in an appeal
12 from the Examiner's decision, the Mayor and City Council, on July 9, 2013, denied the
13 SELU application. This appeal was filed by residents who opposed the Applicant's
14 proposed apartment project. Absent the SELU, Halcyon cannot obtain permits for the well
15 site improvements from the City.

16 On August 6, 2013, the Applicant contacted Halcyon, through counsel, with respect
17 to the deletion of the Applicant's project from Halcyon's CC&N. See August 5, 2013 letter
18 from Mr. T. Campbell, attached as Exhibit D. Tucson Water has assured the Applicant that
19 it is willing and able to provide domestic water service the project if it is deleted from
20 Halcyon's CC&N.¹ See August 13, 2013 letter from Tucson Water, attached as Exhibit E.
21 Counsel for Halcyon, Mr. Gregory Good, responded on August 20, 2013 with the letter
22 attached as Exhibit F. To summarize, Halcyon believes that a different engineering design
23 would not require the City's approval and that the Applicant is obligated to pursue such
24 alternative design under the line extension agreement between the parties. Halcyon is
25 wrong on both arguments.

26 ¹ Tucson Water currently provides fire service to the Applicant's parcel and will continue to
provide fire service after construction of the apartments.

1 There is no way to serve the Applicant's project from Halcyon's well site without
2 upgrades to the site's well and/or storage capacities. *See* the Declaration of Craig
3 Cannizzaro, P.E. (the Applicant's engineer), attached as Exhibit G. Further, any upgrade to
4 Halcyon's well site would require a SELU from the City. This is explained in the
5 Declaration of Frank S. Bangs, Jr. (the Applicant's zoning attorney), attached as Exhibit H.

6 The residents' opposition to the SELU was based on their opposition to the
7 Applicant's apartment project itself. This is clear from the transcript of the public hearing
8 before the City's Zoning Examiner on April 18, 2013, attached as Exhibit I.² Nineteen
9 individuals spoke in opposition to the SELU and at least eleven of them clearly stated that
10 their objection to the SELU was based on their opposition to the apartment complex.³ For
11 example, Ms. Lisa Irwin, one of two named appellants of the Zoning Examiner's decision,
12 stated at the hearing that "the proposed use of the apartments is directly tied to the
13 expansion of the well. And the proposed apartments are just totally, just totally
14 incompatible with what's around it." At p.27, lines 8-13.

15 To summarize, Halcyon needs a SELU to serve the Applicant's development but the
16 City denied Halcyon's request for a SELU on July 9, 2013. Any alternative engineering
17 design would still require a SELU which would be opposed by residents based on their
18 opposition to the Applicant's proposed apartment project. There is no reason to believe
19 that the Mayor or City Council would reverse their position taken just a few months ago in
20 support of the residents.

21 Finally, the Applicant's line extension agreement ("LEA") with Halcyon, attached as
22 Exhibit J, does not require the Applicant to continue pursuing well site improvements under
23 these circumstances. Under the LEA, the Applicant is responsible for constructing the
24 necessary improvements but the agreement also clearly recognizes that various

25
26 ² *See also*, Exhibit H, Declaration of Mr. Frank Bangs, at ¶ 9.

³ For most of the other commenters, it can be implied from their comments that their primary objection to the SELU was the apartments.

1 governmental approvals will be required before construction can commence. See §§ 1 and
2 8. Halcyon cannot get these required governmental approvals and, therefore, is unable to
3 provide service to the Applicant's development. Further, the LEA is based on the same
4 engineering report that supported the Applicant's attempt to obtain a SELU. In other
5 words, the LEA does not require the Applicant to prepare an alternative engineering design,
6 as alleged by Mr. Good.

7 **III. Prayer for Relief**

8 The Applicant respectfully requests the deletion of its project from the service area
9 of Halcyon's CC&N.

10 RESPECTFULLY SUBMITTED this 20th day of September, 2013.

11 LEWIS ROCA ROTHGERBER LLP

12 
13

14 Thomas H. Campbell
15 Matthew Bingham
16 40 North Central Avenue
17 Phoenix, AZ 85004
18 P: (602) 262-5311

Attorneys for Presidio Trails Development, LLC

18 ORIGINAL and thirteen (13) copies
19 of the foregoing filed this 20th day
of September, 2013, with:

20 The Arizona Corporation Commission
21 Utilities Division – Docket Control
22 1200 W. Washington Street
Phoenix, Arizona 85007

23 Copy of the foregoing hand-delivered
this 20th day of September, 2013, to:

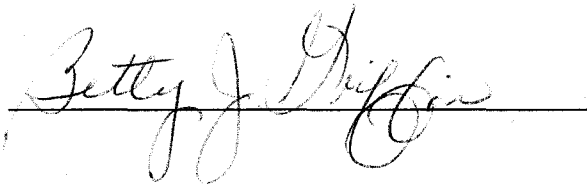
24 Lyn Farmer, Esq.
25 Chief Administrative Law Judge
26 Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 Janice Alward, Esq.
2 Chief Counsel, Legal Division
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, Arizona 85007

6 Mr. Steven M. Olea, Director
7 Utilities Division
8 Arizona Corporation Commission
9 1200 W. Washington Street
10 Phoenix, Arizona 85007

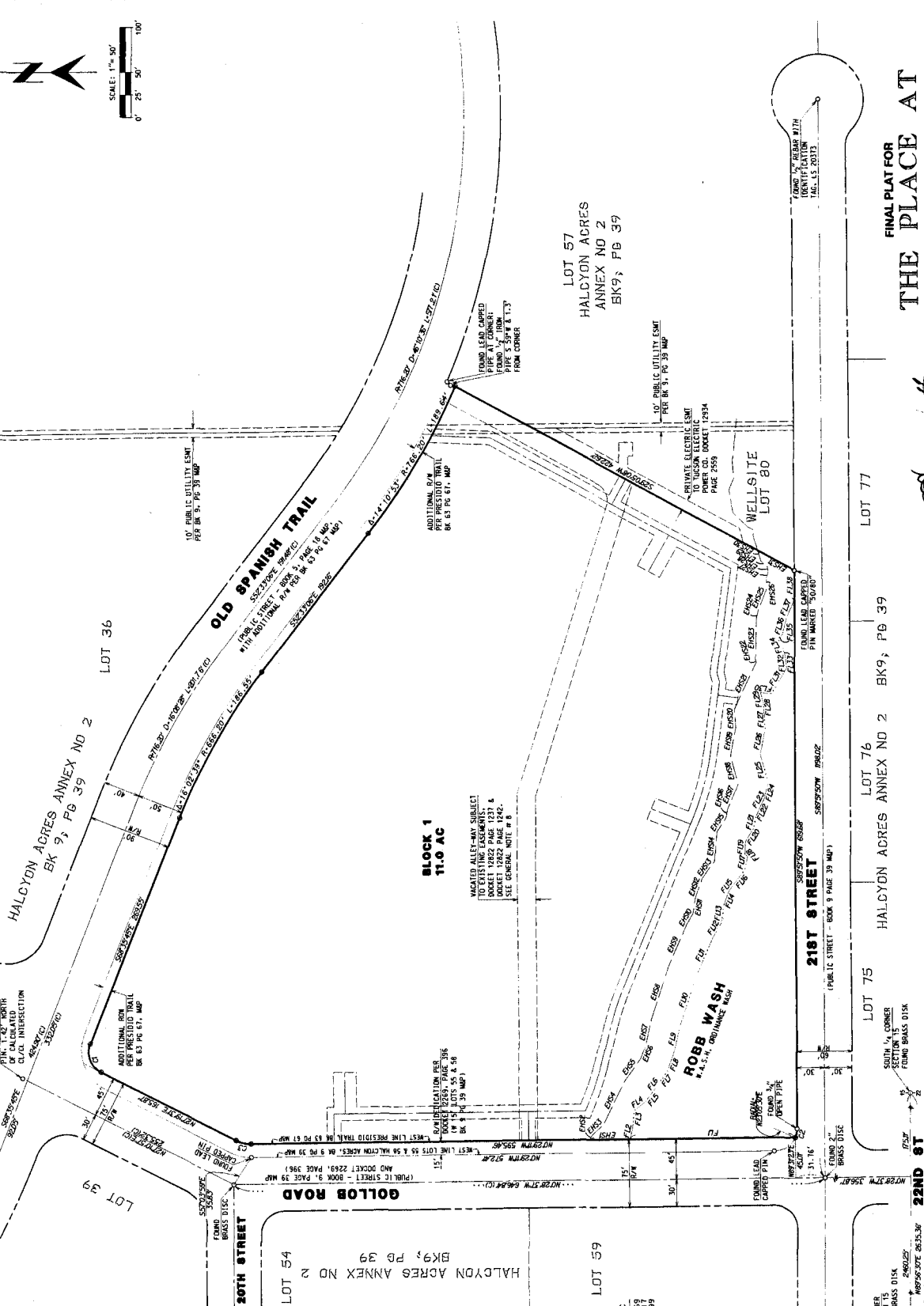
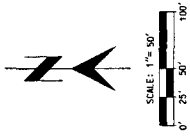
11 Mr. Gregory E. Good
12 Good Law, P.C.
13 3430 E. Sunrise Drive, Suite 170
14 Tucson, Arizona 85718

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A handwritten signature in cursive script, reading "Betty J. Griffin", is written over a horizontal line. The signature is positioned between lines 11 and 12 of the document.

Exhibit A



FLOOD LINE DATA TABLE

NAME	DIRECTION	LENGTH
FL 1	N 12° 55' 11" W	12.76
FL 2	N 12° 55' 11" W	12.76
FL 3	N 12° 55' 11" W	12.76
FL 4	N 12° 55' 11" W	12.76
FL 5	N 12° 55' 11" W	12.76
FL 6	N 12° 55' 11" W	12.76
FL 7	N 12° 55' 11" W	12.76
FL 8	N 12° 55' 11" W	12.76
FL 9	N 12° 55' 11" W	12.76
FL 10	N 12° 55' 11" W	12.76
FL 11	N 12° 55' 11" W	12.76
FL 12	N 12° 55' 11" W	12.76
FL 13	N 12° 55' 11" W	12.76
FL 14	N 12° 55' 11" W	12.76
FL 15	N 12° 55' 11" W	12.76
FL 16	N 12° 55' 11" W	12.76
FL 17	N 12° 55' 11" W	12.76
FL 18	N 12° 55' 11" W	12.76
FL 19	N 12° 55' 11" W	12.76
FL 20	N 12° 55' 11" W	12.76
FL 21	N 12° 55' 11" W	12.76
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FL 23	N 12° 55' 11" W	12.76
FL 24	N 12° 55' 11" W	12.76
FL 25	N 12° 55' 11" W	12.76
FL 26	N 12° 55' 11" W	12.76
FL 27	N 12° 55' 11" W	12.76
FL 28	N 12° 55' 11" W	12.76
FL 29	N 12° 55' 11" W	12.76
FL 30	N 12° 55' 11" W	12.76
FL 31	N 12° 55' 11" W	12.76
FL 32	N 12° 55' 11" W	12.76
FL 33	N 12° 55' 11" W	12.76
FL 34	N 12° 55' 11" W	12.76
FL 35	N 12° 55' 11" W	12.76
FL 36	N 12° 55' 11" W	12.76
FL 37	N 12° 55' 11" W	12.76
FL 38	N 12° 55' 11" W	12.76
FL 39	N 12° 55' 11" W	12.76
FL 40	N 12° 55' 11" W	12.76
FL 41	N 12° 55' 11" W	12.76
FL 42	N 12° 55' 11" W	12.76
FL 43	N 12° 55' 11" W	12.76
FL 44	N 12° 55' 11" W	12.76
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FL 47	N 12° 55' 11" W	12.76
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FL 52	N 12° 55' 11" W	12.76
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FL 74	N 12° 55' 11" W	12.76
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FL 91	N 12° 55' 11" W	12.76
FL 92	N 12° 55' 11" W	12.76
FL 93	N 12° 55' 11" W	12.76
FL 94	N 12° 55' 11" W	12.76
FL 95	N 12° 55' 11" W	12.76
FL 96	N 12° 55' 11" W	12.76
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FL 98	N 12° 55' 11" W	12.76
FL 99	N 12° 55' 11" W	12.76
FL 100	N 12° 55' 11" W	12.76

EROSION HAZARD SETBACK LINE DATA TABLE

NAME	DIRECTION	LENGTH
EL 1	N 45° 27' 11" W	45.27
EL 2	N 45° 27' 11" W	45.27
EL 3	N 45° 27' 11" W	45.27
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EL 15	N 45° 27' 11" W	45.27
EL 16	N 45° 27' 11" W	45.27
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EL 99	N 45° 27' 11" W	45.27
EL 100	N 45° 27' 11" W	45.27

CURVE DATA TABLE

NAME	DELTA	RADIUS	ARC
C 1	84° 04' 44"	25.00	36.69
C 2	27° 18' 42"	25.00	10.37
C 3	27° 18' 42"	25.00	10.37

20th Street
21st Street
22nd Street
Basis of Bearings

SE CORNER
SECTION 15
FOUND BRASS DISK
24" x 12"

20th Street
21st Street
22nd Street
Basis of Bearings

SE CORNER
SECTION 15
FOUND BRASS DISK
24" x 12"

**FINAL PLAT FOR
THE PLACE AT
PRESIDIO TRAIL**
BLOCK 1

LOT 57
HALCYON ACRES
ANNEX NO 2
BK 9, PG 39

LOT 36
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 39
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 54
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 59
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 75
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 76
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 77
HALCYON ACRES ANNEX NO 2
BK 9, PG 39

LOT 80
WELLSITE

LOT 81
WELLSITE



A RESUBDIVISION OF THE PRESIDIO TRAIL SUBDIVISION
AS RECORDED IN THE OFFICE OF THE PIMA COUNTY RECORDER
AT 8004 S. RIVER MERIDIAN PIMA COUNTY, ARIZONA
S12-017
S05-135
C9-84-65





SHEET 2 OF 2

Exhibit B

COUITY: Pima

RANGE 15 East

TOWNSHIP 14 South

-  W-2312 (1)
Halcyon Acres Annex #2 Water Company, Inc.
-  W-1953 (1)
Halcyon Acres Water Users Assoc.
-  W-1337 (2)
Rincon Ranch Estates Water Company, Inc.
-  (8)
City of Tucson (Nonjurisdictional)

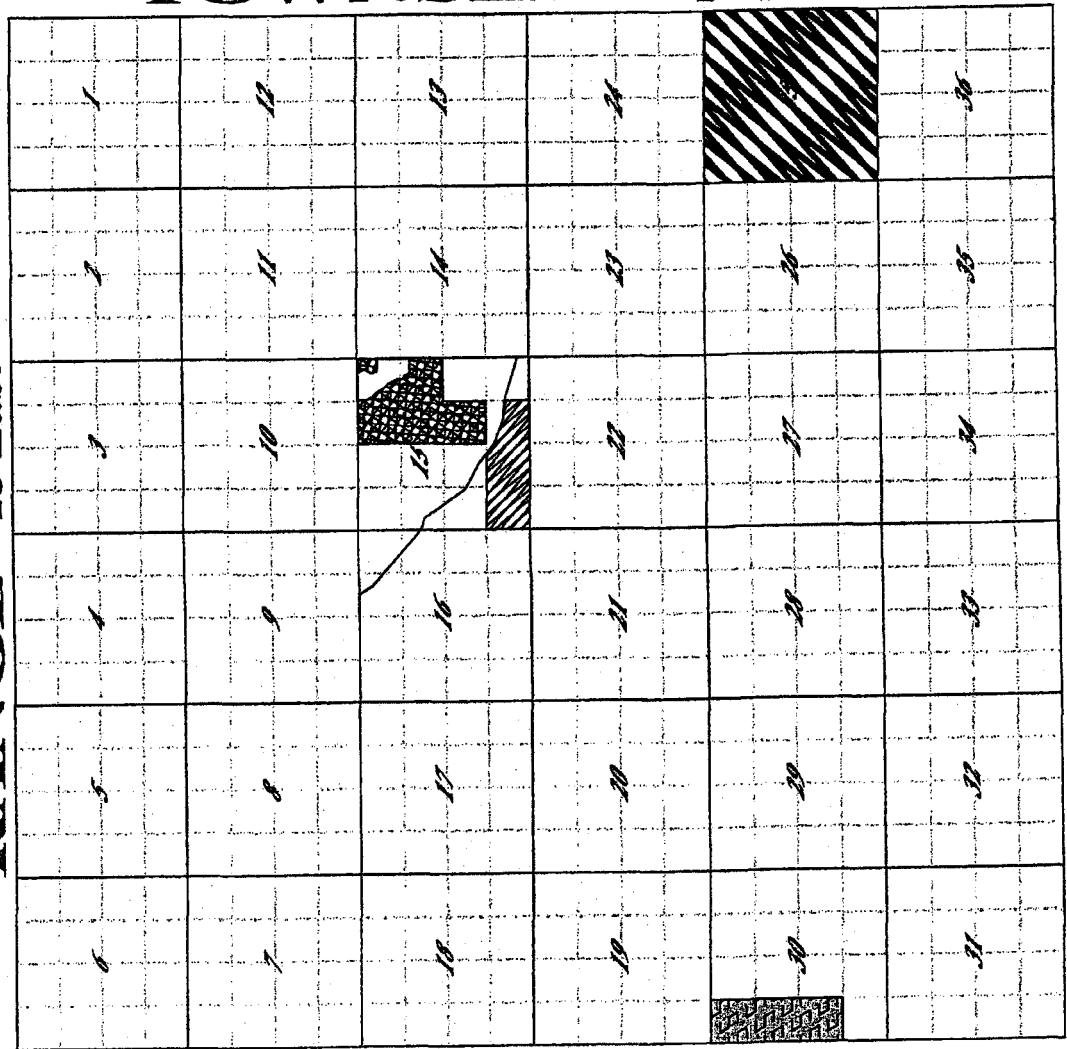


Figure 2: Certificated Area

Exhibit C



CITY OF
TUCSON
OFFICE OF THE
CITY CLERK

July 12, 2013

Karen Hill, Appellant
9010 E. Harborage Dr.
Tucson, AZ 85710

Lisa Irwin, Appellant
715 S. Gollob Rd.
Tucson, AZ 85710

RECEIVED
JUL 15 2013

SUBJECT: Appeal of the Zoning Examiner Decision, dated April 22, 2013
SE-13-24, Halcyon Acres Annex No. 2 Water Co. – E. 21st St.

Please be advised that at the regular meeting of July 9, 2013, the Mayor and Council voted to reverse the decision of the Zoning Examiner in the subject case, thereby granting your appeal and denying the Special Exception application.

If you have any questions regarding this matter, please contact me or Suzanne Mesich, Assistant City Clerk, at 791-4213.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roger W. Randolph".

Roger W. Randolph
City Clerk

Handwritten initials, possibly "JR", in dark ink.

RWR:SM:sl

cc: Richard Miranda, City Manager
Mike Rankin, City Attorney
Tom McMahon, City Attorney's Office
Ernie Duarte, Director, Planning and Development Services Department
Linus Kafka, Zoning Examiner
Interested Parties (as attached)

SE-13-24
Halcyon Acres Annex No. 2 Water Co. – E. 21st St.

Interested Parties

Halcyon Acres Annex No. 2 Water Company, Inc., Owner
PO Box 85160
Tucson, Arizona 85710

Rick Engineering, Applicant/Agent
c/o Paul Iezzi
3945 E. Ft. Lowell Rd. #111
Tucson, AZ 85712

Frank Bangs, Attorney for Applicant
4733 East Camp Lowell Drive
Tucson, AZ 85712

Exhibit D

August 5, 2013

Gregory E. Good, Esq.
Good Law, P.C.
3430 East Sunrise Drive, Suite 170
Tucson, Arizona 85718

Re: Water Service for The Place at Presidio Trail Apartments

Dear Greg:

We represent The Place at Presidio Trail Apartments ("Presidio Trail"). We understand that you represent Halcyon Acres Annex #2 Water Company ("Halcyon"). We further understand that the Presidio Trail project is located within the Halcyon service territory authorized by the Arizona Corporation Commission ("Commission"). Presidio Trail has requested water service from Halcyon, but Halcyon is unable to provide that service. As a result, Presidio Trail requests that Halcyon agree that the portion of its authorized service territory on which Presidio Trail will be built be deleted from Halcyon's Certificate of Convenience and Necessity ("CC&N") so that Presidio Trail can receive water service from the City of Tucson's ("City") municipal water utility, Tucson Water.

On September 24, 2012, a new plat for Presidio Trail was recorded. *See* Block One of The Place at Presidio Trail subdivision, Pima County records, Sequence No. 20122680359.

Under Arizona Department of Environmental Quality ("ADEQ") regulations, Halcyon's existing well site lacks the pumping and storage capacity to serve Presidio Trail. An engineering firm (Westland) identified the well improvements needed to meet ADEQ standards and this plan for the upgrade was approved by both Halcyon and the Pima County Department of Environmental Quality, the local agency to whom approval authority has been delegated by ADEQ.

Halcyon's existing well site is non-conforming under current City zoning regulations governing minimum lot size and building set-backs and had not previously been approved as a special exception land use ("SELU") under the current SR zone use regulations applicable to the well site. As a result, the City determined in 2012 that it would be necessary for Halcyon to obtain SELU approval for the well site upgrade and variances from the City's Board of Adjustment (the "Board") from the minimum lot size and set back requirements.

In April 2013, the City's Zoning Examiner approved Halcyon's SELU application with conditions, and the Board approved the requested variances. However, in an appeal from the Examiner's decision, the City Mayor and Council, on July 9, 2013, denied the SELU application.

I understand that the appeal was supported by some customers and at least one owner of Halcyon. Absent the SELU, Halcyon cannot obtain permits for the well site improvements from the City. Attached is the City notice of the Mayor and Council denial on appeal.

The Commission may delete a portion of a service area from a water company's CC&N if there is an evidentiary showing that the water company is unable or unwilling to provide service at reasonable rates to the area in question. *James P. Paul Water Company v. Az Corporation Commission*, (1983), 137 Az. 426, 671 P2d. 404. In light of Halcyon's inability to get the necessary City approvals to construct the water facility improvements required by ADEQ, Halcyon is unable to provide service to Presidio Trail and deletion of Presidio Trail is appropriate. The Commission must approve deletion of a portion of the Halcyon CC&N. Presidio Trail would prefer to file a deletion application jointly with Halcyon, but it will be necessary for Presidio Trail to file such an application even without Halcyon's support.

Presidio Trail would like to receive a formal response from Halcyon within the next ten (10) days so that we can proceed with the Commission application. It is important that this matter be resolved expeditiously so that Presidio Trail can make the necessary arrangements with Tucson Water to receive domestic water service from Tucson Water. Tucson Water has already committed to providing fire flow and has facilities immediately adjacent to Presidio Trail that can provide domestic water.

Very truly yours,



Thomas H. Campbell

THC/bjg
Enclosure
cc: Ross McCallister

Exhibit E



CITY OF
TUCSON

TUCSON WATER
DEPARTMENT

August 13, 2013

Ross McCallister
MC Realty Advisors, LLC
15170 N. Hayden Road
Suite 1
Scottsdale, AZ 85280

Re: Water Availability for The Place @Presidio Trail Apartments, APN 134031450;
T-14, R-15, SEC-15, Location Code: TUC, Total Area: 8.12 ac., Zoning: C-1

This letter is in response to your request for assurance that Tucson Water will provide both domestic water and fire flow to the Presidio Trail Apartments.

Because the parcels in question are within the Tucson City limits, Tucson Water is required and is able to supply fire flow to the Presidio Trail Apartments. Tucson Water currently provides fire flow to the subject parcel through an 8-inch main located in Gollob Rd. (directly west of the parcel) and an 8-inch main located in Old Spanish Trail (directly to the north). No Tucson Water mains exist to the south or to the east of the parcel. Specific infrastructure requirements for the apartments will be determined through the master plan review process.

The parcel currently is within the service area of Halcyon Acres Annex No. 2 Water Company, Inc. ("Halcyon"). As such, Halcyon is authorized by the Arizona Corporation Commission ("ACC") to provide domestic water to the parcel. Our understanding is that Halcyon is unable to provide domestic water to the Presidio Trail Apartments because it is unable to expand existing facilities to meet the demands of the Presidio Trail Apartments. We also understand that you intend to seek an ACC order deleting the parcel from Halcyon's authorized service territory.

If the ACC deletes the parcel from the Halcyon service territory, Tucson Water would be able and willing to provide domestic water service to the Presidio Trail Apartments, should Presidio Trail comply with Tucson Water regulations and requirements, including deposit and contribution requirements for any necessary infrastructure improvements.

Respectfully,

Sandy Elder
Deputy Director

SE:CA:lr



Exhibit F

Good Law, P.C.

ATTORNEYS AT LAW

Gregory E. Good*
good@goodlaw.net

Of Counsel with Duffield, Adamson & Helenbolt, P.C.

Foothills Corporate Center
3430 E. Sunrise Drive • Suite 170
Tucson, Arizona 85718

August 20, 2013

Via Electronic and First Class Mail

Thomas H. Campbell, Esq.
Lewis and Roca, LLP
40 N. Central Avenue, 19th Floor
Phoenix, AZ 85004-4429

RE: Water Service for The Place at Presidio Trail Apartments

Dear Tom:

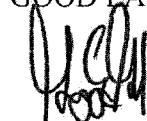
This will respond to your letter dated August 5, 2013 requesting deletion from Halcyon Acres' Certificate of Convenience and Necessity. We believe your request is premature, unripe.

There appear to be more than one available configuration that will satisfy the engineering requirements and land use codes. Your client has the obligation under the Line Extension Agreement to prepare the engineering. Your client's initial proposed engineering configuration can be adjusted and resubmitted to the City. This time, it would seem prudent that your client's engineers meet with the neighbors who disliked the proposed configuration. It is the neighbors' objections to the height and location of your client's proposed configuration, not any objection or refusal by the water company, which has led to the current delay. I would suggest that instead of filing petitions with the Arizona Corporations Commission, your client submits an engineering configuration which is compliant with the applicable codes. As before, we will cooperate to assist you in this process.

Halcyon Acres remains ready, willing and able to accommodate your client's service requests. If it is determined that there are no compliant configurations which are possible, we will reconsider your request for deletion. However, that is not yet the case.

Sincerely,

GOOD LAW, P.C.



Gregory E. Good

GEG/gm
cc: Client

Exhibit G

DECLARATION OF CRAIG CANNIZZARO, P.E.

I, Craig Cannizzaro, declare as follows:

1. I am a resident of the State of Arizona and am over 21 years of age. I have personal knowledge of the facts contained herein.
2. I am a Senior Project Manager for Westland Resources, Inc. In this position, I manage water and wastewater engineering projects.
3. I received a Bachelor of Science degree in Civil Engineering from the University of Arizona in 1995.
4. I am registered as a Professional Engineer with the State of Arizona. I received this license in May 2000.
5. I have worked full-time in water and wastewater engineering for the past 18 years. This includes at least 20 projects involving upgrades to drinking water systems.
6. In August 2011, my firm, Westland Resources, completed a Water System Analysis for The Place at Presidio Trails Apartment Complex and the remaining undeveloped property within the service area of Halcyon Acres Annex No. 2 Water Company, Inc. ("Halcyon"). Based on this study, we concluded that there is no way to serve the apartment project without upgrades to the well and/or storage capacities of the well site owned by Halcyon.
7. In August 2012, I finalized and stamped a complete set of final plans for water system improvements to Halcyon's well site that would allow the site to serve The Place at Presidio Trails apartments. These plans included a new 150,000 gallon storage tank, a new 750 gallon per minute booster station, and certain improvements to the site's existing well. These are the improvements for which The Place at Presidio Trails, on behalf of Halcyon, tried to get zoning approval from the City of Tucson.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 20th day of September, 2013



Craig Canfizzaro, P.E.

Exhibit H

DECLARATION OF FRANK S. BANGS, JR.

I, Frank S. Bangs, Jr., declare as follows:

1. I am a resident of the State of Arizona and am over 21 years of age. I have personal knowledge of the facts contained herein.
2. I am a founding partner of the law firm of Lazarus, Silvyn & Bangs, P.C. where I practice real estate and zoning law.
3. I was admitted to the Arizona Bar in 1975 and have been practicing real estate and zoning law since that time.
4. From 1975 to 1983, I worked for the Tucson City Attorney's office where I advised the City in the area of land use controls including zoning, subdivision, floodplain improvements, and sign regulation. In this position, I was responsible for providing day-to-day legal advice to the City's Planning Department, Planning Commission, and Board of Adjustment.
5. I served as counsel of record for Halcyon Acres Annex No. 2 Water Company, Inc. ("Halcyon") in its attempt to obtain zoning approval for well site improvements that would have allowed Halcyon to serve the development known as The Place at Presidio Trail.
6. The existing well site is nonconforming under the City's current SR zoning of the property. It is a nonconforming "structure" as to minimum lot size and setbacks and, according to the City, a nonconforming "use" because it never received a special exception land use (SELU) approval required for utility distribution system uses.
7. Because it is nonconforming, the City requires a SELU to add a storage tank (regardless of its size or height), add a new well, or upgrade the capacity of the existing well on this property.
8. Halcyon was able to obtain a SELU from the City's Zoning Examiner. This SELU was appealed to the City's Mayor and Council, which rejected the SELU.

9. The opposition to the SELU that resulted in its rejection by the Mayor and Council was primarily based on residents' opposition to The Place at Presidio Trails apartment project.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 20th day of September, 2013



Frank S. Bangs, Jr.

Exhibit I

ZONING MEMBERS PRESENT:

Linus Kafka, Zoning Examiner
Michael Wyneken, Planning & Development Services
Carolina Almeraz, City Recording Clerk

ZONING EXAMINER: Next on the agenda this evening, and last on the agenda this evening is SE-13-24, Halcyon Acres Water Company, 21st Street. Mr. Wyneken.

MR. WYNEKEN: This is a request by Paul (Inaudible) of Rick Engineering on behalf of the property owners Halcyon Acres Water Company, Annex 2 to allow the expansion of a non-conforming well site with a storage tank and a booster station as a special exception land use in the SR zone.

Special exception site is located on the north side of East 21st Street approximately 1900 feet west of Harrison Road. Preliminary Development Plan proposes installing a new 16-foot tall, 150,000-gallon reservoir and a new 750-gallon permit booster station on a .55-acre parcel, and enclosing the site with a new nine-foot tall CMU wall. Site will accessed from Old Spanish Trail through the property adjacent to the west.

Land Use Code identifies a well site as a distribution system use in the utilities use group, Section 2.2.4.3.d,1 of

the Land Use Code requires approval of an expansion of a distribution use in the SR zone to be processed as a special exception land use through the Zoning Examiner full notice procedure. The application is eligible for processing under the Land Use Code because the owner was the owner of record on January 2nd, 2013.

The General Plan and the Pantano East Area Plan provide policy direction for this site. Both the General Plan and Pantano East support preserving the integrity of existing neighborhoods through appropriate infrastructure improvements, compatible development and appropriate design elements.

The proposed expansion and upgrade of the existing well and reservoir site will provide a higher level of water surface (sic) - service for the surrounding Halcyon Acres area. Selecting environmentally neutral paint colors and limiting the height of the proposed water storage facility and installing appropriate landscaping and screen walls to protect adjacent low density residential uses will reduce the impact of the proposed development.

The Preliminary Development Plan demonstrates a

project can be designed to meet the policy objectives of the General Plan and the Pantano East Area Plan.

Special exception land use case is being processed under the Land Use Code because the proposed use will require a variance to special exception land use performance criterion. The Land Use Code provides the opportunity to seek a variance to special exception land use performance criteria, but the Unified Development Code does not. The owner was owner of record, as I stated before, on January 2nd, 2013, and thus meets the criterion for using the Land Use Code.

The application does not discuss design compatibility or mitigation issues. Neighborhood meeting notes indicate new lighting will be installed on the site. The reservoir and booster station will be enclosed within a masonry wall but not within a building. The noise level of the booster station is not addressed in the application. Staff is recommending the water company provide information demonstrating compliance with the City of Tucson Noise Ordinance.

Tributary to Robb (ph.) Wash runs across the south portion of the site. The Applicant will be required to submit a

report that it addresses on-site/off-site drainage and its impact on any proposed improvements.

To improve the screening of the facility from the residences to the east and the north, Staff is recommending a five-foot wide landscape buffer be established within the 11-foot setback of the masonry wall from the property line. Landscaping should consist of drought-tolerant vegetation, is in character with the existing and surrounding vegetation.

All weather, all weather access to the site will be from Old Spanish Trail through the property to the west. Old Spanish Trail is classified as a gateway arterial with 100-foot wide future right-of-way on the Major Streets and Routes Plan.

Utilities use group distribution system requires approval through the Zoning Examiner full notice procedure and is subject to performance criteria and Land Use Code Sections 3.5.11.a,b,e,h,i and k. Staff has analyzed those requirements and the site is in compliance except for Section 3.5.11.1.b, says where a facility is not enclosed within a building, the surrounding screen shall be used as a building wall for the purposes of setbacks in Section 3.2.3.2.

1 And the, as stated before, the project site will be
2 enclosed by a nine-foot wall, eight foot of masonry with one
3 foot of barbed wire on top, located approximately 11 feet from
4 the east property line. The code requires that that wall be set
5 back four times the height and therefore, the variance request
6 will be made to allow the reduced setback from that four times
7 the height of the wall down to 11 feet.

8 Other than that, the proposal meets the, the code
9 performance criteria. Subject to compliance with the
10 preliminary condition, the project conforms to the Pantano East
11 Area Plan, and the General Plan policies, as well as the Land
12 Use Code performance criteria save for the wall setback.

13 It's properly screened from residential properties.
14 Approval of the requested special exception land use is
15 appropriate. And to date, we have on file two approvals and one
16 protest.

17 ZONING EXAMINER: Thank you, Mr. Wyneken. Do you know
18 if there's been a date set for the Board of Adjustment hearing?

19 MR. WYNEKEN: I believe the, I believe the date is the
20 24th of April.

1 ZONING EXAMINER: Thank you. A couple of candidates
2 for giving the presentation. Is it Mr. Bangs? Okay. Mr.
3 Bangs, before you begin, let me just ask how many people are
4 here tonight to speak, or wish to speak on this case?

5 All right. Now if I did not - whoa. Keep your hands
6 up. If I did not swear you in at the beginning with the group,
7 keep your hand up. If I did, lower your hand. So there's a few
8 of you. Why don't you stand up? If I didn't swear you in, I'll
9 swear you in right now. I'll swear everybody in who didn't -
10 who wishes to speak who didn't get sworn in.

11 If you'll raise your right hand, do you swear/affirm
12 to tell the truth, the whole truth and nothing but the truth?

13 (Affirmative.)

14 ZONING EXAMINER: All right. Thank you. Then get
15 that out of the way and, Mr. Bangs, if you will.

16 MR. BANGS: Mr. Kafka, my name is Frank Bangs. My
17 business address is 4733 East Camp Lowell Drive. I represent MC
18 Companies, but tonight I will be speaking on behalf of the
19 Halcyon Acres Annex No. 2 Water Company. I'll just refer to it
20 as the water company going forward.

1 Also present this evening is Mr. Gene Willcox.
2 He's the President of the water company. He's available to
3 answer any questions you may have. And also, Paul Yezzi (ph.)
4 of Rick Engineering Company. He's the engineering and planning
5 consultant on this particular application.

6 As a matter of housekeeping, Mr. Kafka, as to the
7 proposed conditions, we have no objections. Condition No. 2
8 requires a standard waiver form of the City. I believe that Mr.
9 Wyneken is aware that we have discussed its wording with the
10 City Attorney's Office and Planning & Development Services. And
11 we've agreed on some revisions to it to make it more accurately
12 reflect this (inaudible) situation. With that change, that
13 condition is acceptable to the Applicant.

14 I'm going to focus my remarks - and, oh, Mr. Kafka, I
15 have a copy if Mr. Wyneken doesn't have one so that you're,
16 you're aware of what that is. That's something that would be
17 useful to you.

18 ZONING EXAMINER: Okay. All right. I'm assuming it's
19 because it's a special exception you have some concerns about
20 its appli- -- 207's applicability, or the statute's

1 applicability to that?

2 MR. BANGS: Without belaboring the point, both City
3 Attorney's Office and the Applicant agree that the statute
4 probably doesn't apply to this (inaudible) situation. However,
5 out of an abundance of (inaudible)

6 ZONING EXAMINER: CYA as it were.

7 MR. BANGS: Indeed, as you've more elegantly described
8 it than I do. The, the - we simply made some changes to make it
9 conform to this -

10 ZONING EXAMINER: This -

11 MR. BANGS: - special exception land use -

12 ZONING EXAMINER: Okay.

13 MR. BANGS: - application. Mr. Kafka, I'd like just
14 to focus my comments this evening on your required findings
15 under LUC Section 5 3.9.3. There are five findings that are
16 required of you. They're covered in the Staff report. I'd just
17 like to, to note them to the record.

18 Subsection A requires this application to meet all
19 applicable regulatory standards as Staff has stated in its
20 presentation. In its report, it does. There is that one

1 exception that was noted by Mr. Wyneken, and that is the minimum
2 lot size and setbacks in SR for this particular use. That is
3 the purpose for the companion application for variances from the
4 Board of Adjustment. And that is, indeed, set for April 24th.
5 The, the second criterion, Subsection B, is that any
6 adverse impacts on adjacent land uses have either been avoided
7 or mitigated. I organized those in sort of groupings that I
8 think are applicable here. First, in terms of visual impacts,
9 the facility, given its height and location, will have minimum
10 impacts on views to the, to the surrounding mountains.
11 The facility itself will now be enclosed in an eight-
12 foot masonry wall. The current enclosure is simply a chainlink
13 fence. As required by Staff, or recommended by Staff, we, we
14 agree the east side of the enclosure will be landscaped. We
15 also agree with the condition requiring the facility be painted
16 in earth tones.
17 In addition Robb Wash will remain in its natural state
18 as the drainage report will show we simply have no development
19 that intrudes into Robb Wash. And finally, the facility
20 upgrades described in this application will include

1 undergrounding of the existing overhead electric service which
2 should improve the visual quality of that area.
3 The second area of potential impacts is noise. The
4 nearest residence we would note is over 270 feet away. This is
5 a well site that's been in existence for 50 years. And as far
6 as we are aware, there's never been any complaints about noise
7 from it.
8 As to the upgrades to the facility, we agree to the
9 condition that we will supply manufactured specs. showing that
10 it meets City of Tucson Noise Ordinance standards.
11 Third, lighting. That was an issue that came up in
12 our neighborhood meeting. Lighting will be limited to that
13 required for security of the site, and then very localized
14 illumination of the control panel if it needs to be accessed at
15 the nighttime. All of the illumination will be shielded to
16 prevent light trespass or pollution as required by the City's
17 Outdoor Lighting Code.
18 The third requirement, Subsection C, is for adequate
19 vehicular and pedestrian access. We'd like to note that this
20 facility is, and will remain unmanned. The only access that's

1 required to it is for periodic maintenance or if there's some
2 kind of outage that needs to be addressed.
3 The current access is through the property to the
4 east. With its development, all weather access will continue to
5 be through that property from Old Spanish Trail. There will be
6 no need for any future access through Robb Wash from 21st Street
7 to the south.
8 The fourth criterion, finding requirement is that it
9 has adequate public facilities and services. Of course, this is
10 a public utility facility, and it provides water services to its
11 surrounding service area under its certificate of convenience
12 and necessity from the Corporation Commission.
13 The overriding consideration in these alterations to
14 the existing facility is to insure that they meet for existing
15 and future customers a current ADEQ standards for quality and
16 reliability of water provided to its customers.
17 The development package, that is the development plan
18 that will be submitted as a condition of this approval, will
19 insure compliance with the drainage regulations, City's drainage
20 regulations and provide the required report.

1 The last required finding deals with General Plan
2 compliance. You've heard Mr. Wyneken's description of that.
3 I'd just like to note that in addition, that's a General Plan
4 and its element number one introduction states, and I quote,
5 "The City is to promote private construction of timely and
6 financially infrastructure and expansion that is coordinated
7 with development activity." In other words, the plan encourages
8 the very thing that Halcyon is doing here.
9 As stated in the section that I described to you,
10 5392-B, your decision in this matter is administrative in
11 nature. The issue is whether Halcyon is satisfied in its
12 application, its presentation to you. The requirements of the
13 code, Planning & Development Services Staff has recommended
14 approval to you based on those criteria. We believe that their
15 conclusion is, is correct.
16 One thing I wanted to point out is, is mentioned in
17 the Staff report, the site is, is currently non-conforming as,
18 as structurally non-conforming as to the setbacks and the lot
19 size requirements. It is not, however, a non-conforming use.
20 This is a use that is permitted in the SR zone now since 1995,

1 subject to special exception land use approval.
2 But it is, in fact, an existing use, in existence long
3 before, and conforming to both City and County regulations that
4 apply to it. This approval is required so that Halcyon can meet
5 its state requirements and provide safe (inaudible) water
6 service to its existing and future customers.
7 Mr. Kafka, I'd be happy any questions now, or Mr.
8 Willcox and Mr. Yezzi are available for that as well. I'd like
9 to reserve a few minutes of time at the end to respond to any
10 issues that may come up in the course of the public comments on
11 the matter.
12 ZONING EXAMINER: Sure. I don't have any questions
13 right now, but I'd like to hear from folks.
14 MR. BANGS: Sure.
15 ZONING EXAMINER: But sometimes these meetings do run
16 a long time, and I know people might want to go to the bathroom
17 or get some water or something. So why don't we take a four-
18 minute, five-minute break, allow people to have a opportunity to
19 use facilities and then come back at 8:50, if that's okay. And
20 I'll proceed with proponents of the case.

13

1 (A short break was taken.)
2 ZONING EXAMINER: Settle down and retake our seats.
3 MALE SPEAKER: Sir, could you give us your name again
4 and spell it for us.
5 ZONING EXAMINER: Sure. I'll let people settle down,
6 then I'll do that. Request is made for me to reiterate, repeat
7 my name. It's Linus, L-I-N-U-S, Kafka, K-A-F-K-A. Zoning
8 Examiner for the City of Tucson. Mr. Bangs, did you want to
9 make some additional comments?
10 MR. BANGS: Mr. Kafka, during the break, one of the
11 members in the audience, persons in the audience, came up and
12 asked me a little bit more information about this application.
13 And the thrust of it was, does this have anything to
14 do with the Presidio Trails apartment project to the west? The
15 answer is, I gave to him was that, no. Your decision, the
16 application is - has to do with the alteration and expan- --
17 improvements to the Halcyon (inaudible)
18 ZONING EXAMINER: Please, I don't want to hear - I'm
19 sorry, Mr. Bangs. I don't want to hear that kind of thing
20 again. I want respect and civility regardless. When anyone is

14

1 here at this microphone, they're talking to me, and your job is
2 to listen, and my job is to listen. I want you to respect my
3 job, I respect you when you come up here, and I want you to
4 respect and have civility for everyone who speaks. So, please,
5 none of that. Thank you. Mr. Bangs.
6 MR. BANGS: The suggestion that was then given to me
7 was perhaps it would be useful to explain that to members of the
8 audience so that they understand, and perhaps gauge their
9 remarks accordingly. So I did that as a, as a service to all of
10 us. Thank you, Mr. Kafka.
11 ZONING EXAMINER: Thank you. All right. I, I know
12 that a lot of people do want to speak on this issue. I, I do
13 appreciate that people come out. They spend their time, come
14 out to a zoning hearing at 9 o'clock at night. And people have
15 obligations and lives.
16 So - and what I want to do is do the same thing I did
17 with the case, if you were here earlier for that case, and have
18 a, a time on people's comments of about five minutes. That way,
19 we can all get a chance to speak. And usually I'll allow people
20 to come back if they urgently want to reiterate something or, or

15

1 add.
2 But to begin with, why don't we start with a limit of
3 five minutes, and start with those of you who would like to
4 speak in support of the application. So if you're in support of
5 the application, if you'd raise your hand. Anybody who wishes
6 to speak in support of it. All right.
7 Those of you who wish to speak in opposition to the
8 proposal, if you'd raise your hand. Okay. So I'm gonna have -
9 you're gonna have to do that a few times, so I'll start with
10 you, ma'am. And if you could write your name down on the sign-
11 in sheet, and then state your name for the record. If we run
12 out of spaces on the sign-in sheet, we'll flip it over and keep
13 numbering it.
14 MS. GLASS: My name is Elizabeth A. Glass. I live at
15 8756 East Harborage Drive. The concerns I have with this
16 expansion are threefold. One is the fact that there is going to
17 be a large wall that is too close to the road, or too close to
18 the property line that once - that it is still visible from the
19 roads, and there's still no clearance and sort of leeway around
20 the wall if, if access had to be made around it.

16

1 The second is that my house is right up against Robb
2 Wash on Harborage Drive. And my concern is with the expansion
3 of this, with the larger tanks, the larger water runoff from the
4 storage tanks and the expanded concrete that will have to be put
5 in, that this will negatively impact the amount of water that
6 comes down Robb Wash, which already has started to increase the
7 amount of water that comes across Harborage during major monsoon
8 road (sic) - storms. Thank you.

9 ZONING EXAMINER: Thank you. All right. Anybody
10 else? Okay, sir.

11 MR. MORITZ: My name is John Moritz. I live at 9025
12 East 21st. That's approximately one property down from Gollob
13 on 21st Street. Well, I was sitting listening to this and was
14 kind of amazed at the last statement that was just made, because
15 I have a copy of the Zoning Examiner's Special Exception
16 Procedure Application.

17 And in this, on page, where's my yeses? (Inaudible)
18 page one, support mid-urban character residential development
19 along arterial streets and collector streets, their response in
20 this on page two says, "Halcyon's well site improvements will

1 allow it to serve fully entitled zone platted and approved
2 development plans, mid-urban density in-fill development with
3 its - within its service area. The residential development is
4 located on Old Spanish Trail, and its proximity to commercial
5 (inaudible)." There's one, one statement they made that
6 supports that this is exactly why they're doing this is to
7 support the apartment complex that's going in.

8 Also on page three, "Encourage the development of a
9 variety of housing types, including single-family detached
10 units, etc." Their statement was, "By upgrading its well site
11 improvements, Halcyon will enable the development of medium
12 density apartments and townhomes within its service area, as
13 well as providing safe and reliable service to its existing
14 customers."

15 So really, in their own words, this is exactly what
16 they're doing this for. They're, they're upgrading their well,
17 because currently, I've been a customer of theirs for 30 years.
18 So has most everybody in Halcyon, we have no problem with our
19 water. And so the only reason why they're putting in a 150,000-
20 gallon, 16-foot high tank with a nine-foot wall is to provide

1 service for the apartment complex that is going in next to the
2 property.

3 And, and just some other things that were also stated
4 that I'd like to comment on. Because of that, I have a map that
5 shows kind of the area. And because they actually brought up
6 the apartment complex in their application, I feel that I can
7 address that in my comments.

8 There are no apartment complexes east on Spanish Trail
9 - I mean east of Camino Seco off of Spanish Trail anywhere. I
10 mean it's, it's a, a renown bicycle route. There are no
11 apartment complexes. The green area on the map are two-and-a-
12 half-acre parcels. They're, they're putting in a 200 and - I
13 guess it's 208-unit apartment complex, splitting it right in
14 half.

15 We've been there for almost 30 years, we walk up 21st
16 Street. It right now is, is mainly desert. So what they're
17 doing, even though it's C-1 zoned, it's gonna split two
18 neighborhoods that have always been two-and-a-half-acre suburban
19 ranch horse properties right in half.

20 Their comments in this application state that, that it

1 is compatible. They say new growth will be accommodated
2 primarily through compatible in-fill. Then they say the Halcyon
3 well site improvements directly facilitate and accommodate new
4 in-fill growth, but it's certainly not compatible in-fill
5 growth.

6 I think to sit and put an isolated apartment complex,
7 which will never have any other apartment complexes around it,
8 based on the homes that are currently there, this apartment
9 complex is gonna be, you know, on one side is two-and-a-half-
10 acre parcels, and the other side is, is a two-and-a-half-acre
11 parcel and, and horse property with stables. It's just incre-
12 - this isn't just incompatibility, it's gross incompatibility.

13 Now we've taken walks for 30 years up 21st Street.
14 It's a dirt road, because Robb Wash basically runs down part of
15 this dirt road. It kind of takes a course of its own. So right
16 now, he said that, yeah, they're gonna put the electric
17 underground.

18 Wow. They're gonna trade it for a nine-foot barbed
19 wire wall and a 16-foot, 150,000, 150,000-gallon tank. That
20 doesn't seem like a fair trade to me. How is that a visual

1 Improvement of any kind?
2 And access. They're talking about the access from
3 Spanish Trail. That's only with the development of the
4 apartment complex. Again, another tie-in with that. Now
5 overriding consideration that it, that it meets needs. The only
6 needs that this is gonna meet is the condition that that
7 apartment complex goes in.
8 Without that apartment complex going in, they have
9 absolutely no need for a 150,000-gallon, 16-foot high tank, and
10 the improvements that they're talking about without it. It is a
11 package, and it's encouraging the development of apartments.
12 That though the C-1 allows for it, it certainly isn't compatible
13 with the neighborhood in any, in any form at all.
14 I, I certainly wish you would consider not allowing
15 these exceptions in any way, for the basic site of the, the tank
16 and the wall and everything else. But included in the package
17 with the apartment complex, it has no business being done.
18 Thank you very much.
19 ZONING EXAMINER: Thank you. Ma'am.
20 MS. ADAMS: I'm requesting to be able to read this so

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1 I can stay focused -
2 ZONING EXAMINER: Sure.
3 MS. ADAMS: - please.
4 ZONING EXAMINER: Let me know your name and then -
5 MS. ADAMS: I'm Joanne Adams.
6 ZONING EXAMINER: And then be -
7 MS. ADAMS: Widow of Dale A. Adams. And I'm only
8 mentioning that because his name will come up again.
9 ZONING EXAMINER: Okay.
10 MS. ADAMS: I live at 9030 East 20th Street on two
11 acres in a quiet neighborhood zoned suburban ranch. I have
12 lived in this home since I was married in 1992. Dale's parents
13 purchased the home in September of 1967. In 1983, Elvie (ph.)
14 and Alice Adams, Dale's parents were involved with neighbors in
15 creating a private water company which they named at that time,
16 I believe Halcyon Acres Water Company.
17 The well has served approximately 30 families over the
18 past 30 years. With over those 30 years, not too many problems
19 to my knowledge. Now we have a prospective developer and other
20 investors proposing a large, two-story complex of approximately

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1 208 apartments on 11 acres just east of our suburban ranch
2 neighborhood.
3 The prospective developers of this area are telling us
4 that they plan to upgrade the well, and will be investing a
5 million dollars more or less in the upgrade. They plan to erect
6 a 16-foot high water tower which will block views of the Rincon
7 Mountains that we have enjoyed for so many years.
8 The water well upgrade is being done to serve more
9 than 200 families in a complex that shouldn't be built in this
10 area in the first place. Actually that would be what blocks the
11 Rincon Mountain views.
12 We, as Tucsonans, are always being asked to conserve
13 water because of drought, and that our water tables are being
14 compromised. I'm completely opposed to this projected
15 undertaking, not only because it will drastically affect the
16 integrity of our neighborhood, but because it could seriously
17 affect the flood plain surface runoff as a result of a huge
18 increase in water usage. I'm requesting that you deny the
19 expansion of the well site.
20 ZONING EXAMINER: Thank you. Anyone else wishing to

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1 speak? Ma'am.
2 FEMALE SPEAKER: I'm sorry.
3 ZONING EXAMINER: Oh. No, no, not you. Right behind
4 you. Yeah. There you go. You don't have to apologize for
5 anything.
6 MS. BENHASE: My name is Meg - Margaret Benhase. I
7 live at 8935 East 20th. I have actually two things to - I have
8 my own statement and I have petitions here signed by around 280
9 people opposing this. There's a statement on top if you want me
10 to read it for the record.
11 ZONING EXAMINER: Is the entire - just submit it into
12 the record, and I'll read the, the statements (inaudible)
13 MS. BENHASE: Okay.
14 ZONING EXAMINER: - for time.
15 MS. BENHASE: Okay. I'm, I'm opposed to the expansion
16 of the well. I've read through the, the General Plan and the
17 Pantano East Plan, and both of them state the protecting the
18 integrity of the neighborhood. And like my fellow neighbors
19 have said, we live in a suburban ranch area. The lots are
20 large. It's native desert.

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1 And the current - the water company, you know,
2 currently fits our needs. I've tau- -- or I've looked up the
3 well and the well is, according to the Arizona Well - whoever's
4 in charge of that stuff, whatever their, their letters are, the
5 well says it's from zero to 99 users. We have 36 currently.
6 If development in the area stayed suburban ranch type,
7 low density, I believe 99 users would be plenty enough. The -
8 I, I think enlarging the well to the point of being a 150,000-
9 gallon storage tank with a 750-gallon per minute booster pump,
10 that's an 800% increase.
11 I, I think that doing that will only promote high
12 density in the area. It will promote the apartment complex
13 which wants to go in right next door, and seems to be funding
14 and leading this whole well enlargement.
15 It will also promote more townhomes and things like
16 that, that - in the areas that are already - vacant lots that
17 are suburban ranch, and are vacant lots in our area. I don't
18 mean bulldozed dirt lots. I mean native pristine desert full of
19 wildlife, birds. It's, it's - all those areas up and down 22nd
20 will, I'm sure, turn into townhouses. People in - that

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1 currently own homes are gonna, you know, want to split their
2 lots and make a buck off of it, some of them.
3 And I just don't think it's - I just don't think that
4 this is what Tucson is about, you know? I don't think, I don't
5 think the ideas of a, of a zoning special exception is for
6 things like this. I think it's for, you know, when something
7 will still fit into the neighborhood, when it'll promote what's
8 going on in the neighborhood, when it will, you know, keep the
9 value of the neighborhood, not destroy it. That's what things
10 like this are for. It's, it's not to say, "Oh, it's okay," you
11 know?
12 So I had a big long statement to read, but I'm, I'm
13 not going to. That's what I'm gonna say and I hope you deny
14 this special exception because I don't think it's appropriate
15 for our area.
16 ZONING EXAMINER: Thank you. Anybody else wishing to
17 speak? Ma'am.
18 MS. IRWIN: Hi, my name is Lisa Irwin, and I live at
19 715 South Gollob Road. I am a property owner on one acre
20 currently. And I'm not a user of Halcyon Acres - the water

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1 part, Halcyon Acres 2. I'm part of - part of Halcyon Acre 1.
2 However, I'm about 500 yards from the proposed site,
3 and my great-grandmother, Adelaide Feldcamp (ph.) was one of the
4 original homebuilders in the area. Currently we have - we own
5 our - my grandparents' house that was built in '71, '72, and
6 this neighborhood has stayed the way it has because of hard work
7 and vigilance by my fellow neighbors.
8 If you came out to see the property, you'd know
9 exactly what is appropriate and what is not appropriate for this
10 neighborhood. And the proposed, the proposed use of the
11 apartments is directly tied to the expansion of the well.
12 And the proposed apartments are just totally, just totally
13 incompatible with what's around it.
14 You're looking at, we already have a traffic problem
15 on Old Spanish Trail. You can barely get across. I remember
16 when this neighborhood had dirt roads, but no longer exists.
17 But with the apartments, you're also looking at about two to
18 four hundred more cars in the immediate neighborhood.
19 I have a problem just walking my daughter to school
20 already. We live right across the street from Gill Elementary.

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1 So there is a school in the same vicinity, about 500 yards from
2 the proposed site. You're also talking about overcrowding of
3 the school as well.
4 Very quickly. In the memorandum on this, I noticed
5 three things. The residential policy of the PEAP is to preserve
6 the integrity of established neighborhoods, which we have.
7 Policy three is to protect established residential neighborhoods
8 by supporting compatible development. Non-residential uses are
9 supported where the scale and intensity of use will be
10 compatible with adjacent uses.
11 Policy six is supposed to promote quality and design
12 for all new development through environmentally sensitive design
13 that protects the integrity of existing neighborhoods,
14 complements adjacent land uses and enhances the overall function
15 and visual quality of the street, adjacent properties and the
16 community. Neither of these, the apartment or the well
17 expansion, do either - do any of those.
18 And lastly, I'd like to say to the developer. I
19 really think that you should be ashamed of yourselves for not
20 posting it where the rest of the public could see the proposed

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1 use. I've lived there for a year and a half -
2 ZONING EXAMINER: Ma'am, if you can address me.
3 MS. IRWIN: I'm sorry.
4 ZONING EXAMINER: You're not to talk -
5 MS. IRWIN: I've lived there for a year and a half. I
6 didn't know anything about what was going on until about a month
7 ago at a birthday party that I happened to attend for my
8 daughter.
9 ZONING EXAMINER: I, I will say that I believe the
10 sites for posting are recommended by the City, so I think that
11 we might -
12 MS. IRWIN: It's posted on a road that nobody goes
13 down, put it that way.
14 ZONING EXAMINER: On 21st Street, I believe, is the -
15 MS. IRWIN: And nobody drives down there, yeah.
16 ZONING EXAMINER: So -
17 MS. IRWIN: So -
18 FEMALE SPEAKER: It is a dirt road.
19 MS. IRWIN: Right.
20 ZONING EXAMINER: Yeah. I, I, I went out to see

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1 myself. But I, I think, I think the City does recommend the
2 sites for posting. I believe they do. Mr. Wyneken, do you want
3 to address that just so that we can clarify that? I want to
4 (inaudible)
5 MR. WYNEKEN: Yes, we use the, we use the posting
6 requirements from the Arizona Revised Statutes. The posting
7 requirements for the special exception are the same for
8 rezoning.
9 ZONING EXAMINER: Yeah, so (inaudible)
10 MS. IRWIN: If they truly cared about the
11 neighborhood, they would have let, let the site be known.
12 ZONING EXAMINER: That's -
13 MS. IRWIN: That's all I have -
14 ZONING EXAMINER: That's another point.
15 MS. IRWIN: Right.
16 ZONING EXAMINER: But I just want to (inaudible)
17 MS. IRWIN: That's what I was getting to. So I am
18 completely opposed to the expansion of the well just from a, you
19 know, from just a community standpoint. Thank you.
20 ZONING EXAMINER: Thank you. Sir. I had you jumping

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1 out of your seat.
2 MR. KENT: My name is Jonathan Kent. I live at 9066
3 East 20th Street. And I am a customer of Halcyon Acres No. 2
4 Water Company.
5 ZONING EXAMINER: Excuse me one moment. If - yeah, we
6 need quiet in the room, please. Thank you.
7 MR. KENT: As I said, I am customer of Halcyon Acres
8 No. 2 Water Company. We've lived in our home there on 20th
9 Street for the last 27 years. And the water has been excellent
10 the entire time. And I hope that it continues to be so forever.
11 I have a question for you, though, Mr. Examiner. Will
12 you be able to consider the comments that, that we're presenting
13 regarding the Presidio Trails Apartment complex? Or are you
14 required to exclude that?
15 ZONING EXAMINER: You know, I, I - and it's a really
16 interesting question. I'm - I'd like to hear your comments
17 about the apartment complex, but they have C-1 zoning. It's not
18 in front of me as an issue. What's in front of me is the, the
19 well.
20 And to, to the extent that that is integrally tied to

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1 some other development, I feel that I should be able to hear
2 something about that. But I'm gonna invite Mr. Bangs up
3 afterwards, after people talk, to explore that issue a little
4 bit more. So if, if you want to comment on it, do it with some
5 limited -
6 MR. KENT: Okay. I have a brief comment then.
7 ZONING EXAMINER: Yeah.
8 MR. KENT: I, I am also, as many of the other speakers
9 have said, opposed to this extremely high density use of this
10 land in the middle of a, a relatively low density neighborhood.
11 But to, to play the Devil's Advocate and to consider the
12 possibility that this water company expansion has nothing to do
13 with Presidio Trails, then I'm concerned because it seems like
14 it would put my water company at risk to do such an aggressive
15 expansion without some sort of major outside funding.
16 I fear that our water company would be at risk, and
17 therefore, I'm very concerned about that. Otherwise, that's
18 pretty much all I have to say that hasn't already been said.
19 ZONING EXAMINER: All right. Thank you. All the way
20 in the back, sir.

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1 MR. WINARSKI: How do you do? I'm Dr. Daniel
2 Winarski. I was one of the first IBM families to move down to
3 Tucson from Boulder, Colorado in June of 1978. My wife and I
4 have lived in the same house since then, 647 South Woodstock
5 Drive.
6 And just forgive me for discussing my own personal
7 background. I'm retired lieutenant colonel from the Army Corps
8 of Engineers. And during my Army career as an Army reservist, I
9 taught for 20 years in the Department of Civil and Mechanical
10 Engineers (sic) at the - Engineering at the United States
11 Military Academy at Westpoint.
12 And one thing that hasn't been brought up tonight is
13 with the increased draw of this largely - or greatly expanded
14 well, is going to - how that's going to affect a subsidence in
15 the area causing - could cause cracks in foundations, roads.
16 There could be a lot of damage. The soil isn't really stable in
17 this area and is not gonna be able to withstand such a large
18 withdrawal of water.
19 That's something that no one else has addressed
20 either, for or against this, this expansion. So I felt I needed

1 to bring that forward. And we've been told for the past 34
2 years to conserve water in Tucson, and water is being our most
3 precious resource. But somehow this expansion seems contrary to
4 that.
5 And so I hope that you'll consider subsidence because
6 subsidence isn't something that can be fixed or corrected. Once
7 the soil sinks and you get these - damage to all of the property
8 in the surrounding area, it's, it's, it's done. You can't do
9 anything with it.
10 And lastly, and maybe this is more of an editorial
11 comment, that that is one criticism maybe of just Tucson in
12 general is what my - I've heard described as a checkerboard
13 development. You have neighborhoods in this area which are very
14 low density, and now you want to compromise that with a very
15 high density development. And so there needs to be some better
16 planning involved.
17 But because of the subsidence issue, I'm against the
18 approval of these special exceptions. And I thank you.
19 ZONING EXAMINER: Thank you, sir.
20 DR. WINARSKI: And you're out of the orange cards.

1 ZONING EXAMINER: Oh. Somebody has an extra orange
2 card.
3 DR. WINARSKI: Okay.
4 ZONING EXAMINER: Thank you. Sir, in the brown shirt
5 right here.
6 MR. SCHOCK: Hello. My name is Dale Schock, and I
7 live at 8751 East Harborage. And I've been a resident in that
8 area for 17 years. And I oppose the well expansion project, and
9 I do have the same views of subsidence and sustainability. And
10 I do believe a well of - to expand it to that size is flying
11 this whole thing under the radar just for that expansion.
12 And I do have concerns 'cause that area is on well
13 water and we're also on well water. So I mean if we do have
14 subsidence and the water table does drop, are we gonna have
15 sustainable water in our area, too?
16 So, I mean I agree we all need safe, usable,
17 sustainable water, but a well expansion of that size in that
18 area, I don't agree with it at all. Thank you.
19 ZONING EXAMINER: Thank you. Ma'am, I think that -
20 yes, you. And if we run out of room on that sheet, just - we'll

1 take the back side of the first sheet and continue the
2 numbering. I think you - are you last one on that sheet? Okay.
3 Thank you, ma'am.
4 MS. SCHOCK: Hi, my name is Laurie Schock. I live at
5 8751 East Harborage Drive, and I am extremely opposed to the
6 action that's in front of you. There are several concerns with
7 the expansion, and a lot of it has been said about going up in
8 an established single-family suburban ranch area.
9 The first being water usage in our area. This has a
10 potential to exasperate an already over-taxed system for water
11 roadways and etc. Excuse me. They state that they'll preserve
12 the integrity of the neighborhood, but we fail to see how that
13 can be done with a 16-foot reservoir and nine-foot tall wall.
14 There have been no environmental studies that we have seen
15 or heard about, no wildlife studies, etc. And our area has been
16 tagged by the U of A for redtail hawks, Harris hawks and owls.
17 They have been banded and they've also been on a study list
18 where we have professors and students come out semi-annually,
19 quarterly to come out and check the, the birds and the animals.
20 We're concerned to see how this is going to affect the

1 animals in the area by lack of water, by rearranging all the
2 wash stuff that everybody's talked about so far. Robb Wash is -
3 runs right next to our house.
4 ZONING EXAMINER: Is, is, is that the industry
5 standard term, the stuff?
6 MS. SCHOCK: Yes, that's technical terms. I just
7 wanted you all to know that. Robb Wash runs right next to our
8 house and we have quite a bit of animal traffic that goes
9 through there. And I would hate to see the animals in the area
10 become more affected than they already have with all the new
11 housing developments that have gone south of us.
12 We're losing what has made Tucson what Tucson is.
13 We're, we're forcing animals out of their areas because we want
14 to build apartments or homes, whatever the case may be. And I
15 believe we are going to be losing a lot more by putting in an
16 apartment complex and taking away more water than we're already
17 using.
18 The current enclosure that they're proposing - the
19 current enclosure that they're proposing is a lot different than
20 what is out there right now. There's between a four and a six-

1 foot chainlink fence that surrounds the well site area. It's in
2 a desert area.
3 There's one entrance in and one entrance out. That
4 will not only affect the traffic patterns, it will affect the
5 property values. It's going to affect everything that we have
6 out in our quirky little neighborhood. And I'm asking that you
7 please stop this. We don't need to have this. Thank you.
8 ZONING EXAMINER: Thank you. Sir.
9 MR. HILLER: Yes. I'm Richard Hiller, and I live at
10 485 South Gollob Road. And I'm currently the general manager of
11 Halcyon Acre Water Users Association, Inc., which is a private
12 water company just north of the Halcyon Acres. We, we serve 75
13 customers in our water association.
14 With this project that is - that they're planning on
15 doing here, they should have had an impact analysis statement
16 with ADEQ. And it would be very beneficial to our water company
17 to see this report.
18 It would - we need to know how it's gonna affect the
19 aquifer because we have three existing wells which are
20 approximately half a mile away from this location, and it could

1 cause us to have to put in new wells for our water company.
2 I was wondering if they are required to have a
3 hundred-year assurance of water since they are going to this
4 commercial development. And also, will they be required to have
5 a City backup for their system in case their water - their wells
6 go down. That's all I have. Thank you.
7 ZONING EXAMINER: Thank you. Sir, all the way in the
8 back, then I'll come to you.
9 MR. WHITE: My name is Dave White. I live at 8935
10 East 21st Street. And my first comment is that I notice that
11 the developer of this proposed project put forward some concern
12 for mitigating the impact on the surrounding low density
13 neighborhood.
14 And I just want to say that I think that that - that
15 concern is somewhat insincere since we know that it is set forth
16 to empower the building of this apartment complex. And I think
17 that would be quite evidence if you follow the money, because I
18 don't think that somebody's gonna expand this water just out of
19 the goodness of their heart and give us a new well out there.
20 So I think that I agree 100% with all of the comments

1 that have put - been put forward by my neighbors, both the
2 concerns for what this is designed to empower and also the
3 original intent of this water system being put on a small piece
4 of property is completely appropriate for what its customer base
5 is designed to serve.
6 And it's designed to empower a low density suburban
7 ranch neighborhood and to expand it for the purpose of
8 empowering other development I think is wrong. And so I would
9 discourage the rezoning of this property to put it beyond its
10 intended limits -
11 ZONING EXAMINER: Well, there isn't a rezoning on -
12 MR. WHITE: Well, -
13 ZONING EXAMINER: There isn't a rezoning before me.
14 MR. WHITE: - it's an exception.
15 ZONING EXAMINER: Yes, special exception.
16 MR. WHITE: Yeah, special exception. I would, I would
17 discourage the special exception to allow this to be empowered
18 to, to support the kind of development that it was never
19 intended to support. And thank you to all my neighbors.
20 They've done a great job in what they've had to say. Thank you.

1 ZONING EXAMINER: Thank you, sir. And, sir, I've kept
2 you waiting. I think - is there one more hand that was up?
3 Yeah. Oh, three. Okay. I won't ask again.
4 We had an air conditioner engineer for the last
5 hearing and I sort of wish he was still here. Maybe he could
6 cool the room down a little bit. Sir.
7 MR. PHELPS: Good evening. I'm Richard Phelps. I
8 live at 8916 East Harborage. I would urge you to deny the
9 requested special exception.
10 And as you consider the exception, and the reason I'm
11 urging your denial is, is really in the context of the, the
12 exception. It's apparent from the comments tonight and from
13 the proposal that there is no existing need for the proposed
14 expansion of the, of the well, the creation of a new tank, the
15 wall around it. That the current facility is sufficient for the
16 current needs.
17 Rather, the special exception is designed to
18 facilitate the construction of a very large apartment complex
19 for which I would suggest there is no need inasmuch as there are
20 seven apartment complexes within a half a mile of the site to

1 the west, all of whom regularly in banners out front beg for
2 additional tenants.
3 The addition - the apartment complex will create a
4 traffic issue on a small street, Old Spanish Trail, that is
5 unique in this town, particularly in that area. It has been
6 mentioned it's a major bicycle artery out to the, to the part to
7 the, to the east. The additional traffic could pose a risk, of
8 course, to those bicyclists.
9 It's also been mentioned that this proposed
10 development will land itself right in the middle of a green
11 area. Green in the context of Tucson means desert. But it's
12 also been mentioned that there's a lot of wildlife in that area.
13 What hasn't been mentioned is that included in that
14 wildlife are endangered wildcat families, at least one that
15 roams that area that would be impacted by the significance of
16 that development of the apartment complex.
17 So I'd, I'd encourage you as you consider the
18 requested exception to do so in the context of what the
19 exception is facilitating and the impact that that would have on
20 the surrounding communities, that impact that obviously is not

1 consistent with current uses. And that's really all I have to
2 say.
3 ZONING EXAMINER: Thank you. Sir.
4 MR. LANE: Thank you. Hi. My name is Keith Lane. I
5 live at 8935 East 20th Street, and I just wanted to read
6 something here I had written down.
7 It says: Though the application states that this
8 improvement to the well site will not increase traffic, the
9 future higher density building that will result from the added
10 capacity to the well and the proposed apartment complex will
11 most definitely and dramatically increase traffic which is noted
12 by the Applicant's own statement of a proposed residential
13 development, 208-unit apartment complex within the well site
14 service area triggers the need to increase the capacity of the
15 site in order to provide existing and future customers water
16 service.
17 The purpose of the suburban ranch zone provides for
18 low density, large lot, single-family residential development
19 and suburban ranch uses which would adversely affect the open
20 space agriculture - agricultural and natural characteristics of

1 the - of this zone and are not permitted.
2 The expansion of Halcyon Acres No. 2 well site will
3 directly and indirectly adversely affect the open space
4 agriculture and natural characteristics, along with destroying
5 the integrity of this established neighborhood. And I think it
6 should be denied.
7 ZONING EXAMINER: Thank you, sir. Sir. Okay. After,
8 after him, yeah. Okay.
9 MR. BARSOTTI: My name is Rudolf Barsotti. I am the
10 Treasurer of the Halcyon Acres Water Association, Incorporated.
11 We are a water company that's owned by the residents of Halcyon
12 Acres and Halcyon Acres Annex.
13 I'm in total concurrence with everything that's been
14 said so far, so I'm not gonna repeat that. My, my point is, is
15 that the well expansion that's proposed for Halcyon Acres 2 is
16 not necessary. In our water company, we currently have close to
17 80 residents, or residences. Halcyon Acres 2, I believe, has 30
18 or 40.
19 We have a similar type well system. We expect to have
20 maybe sometime in the future have as many as a hundred. We

1 expect to be able to serve those well into the future. So the
2 only reason for an expansion of Halcyon Acres 2 would be to use
3 that water in some way, which means that they're planning on
4 increasing the use of the water rather dramatically.
5 That will have an impact, I'm sure will have impact on
6 the water table in that particular area. It's totally
7 inappropriate that there be a water source for that whatever
8 development is planned there. For that reason, I'm against this
9 development.
10 ZONING EXAMINER: Thank you. Do you know how many,
11 how many water companies serve the area?
12 MR. BARSOTTI: That area there - well, there's the
13 City, City serves some -
14 ZONING EXAMINER: Yeah.
15 MR. BARSOTTI: - some of the surrounding areas. We
16 serve Halcyon north of, north of Magdalena, east of, of Gollob,
17 and all the way to Harrison. Halcyon Acres, the other company,
18 the company that's proposing this proposal, serves south of Old
19 Spanish Trail and then west to Camino Seco.
20 ZONING EXAMINER: And is there a third -

1 MR. BARSOTTI: I don't know of a third one, no.
2 ZONING EXAMINER: Okay. So there's two, two CCN -
3 MR. BARSOTTI: (Inaudible)
4 ZONING EXAMINER: - water companies and one - and the
5 City, yeah.
6 MR. BARSOTTI: Well, the, the - there's Halcyon Acres
7 2 is, is a, is a different company. It's not owned by the
8 residents. Halcyon Company is owned by the residents itself.
9 ZONING EXAMINER: Okay.
10 MR. BARSOTTI: We are incorporated.
11 ZONING EXAMINER: All right. Thank you.
12 MR. BARSOTTI: You're welcome.
13 ZONING EXAMINER: And, ma'am, you have been waiting
14 very patiently. I know there's, there's - I think there's three
15 more.
16 FEMALE SPEAKER: (Inaudible) We're going together.
17 ZONING EXAMINER: Are you going together?
18 (Multiple speakers - inaudible conversation.)
19 FEMALE SPEAKER: We kind of represent neighborhood
20 and, and a school.

1 ZONING EXAMINER: All right. Well, what I'll say is
2 you both give your names at first. And then if you cut in with
3 each other, just bear in mind that we have a recording clerk
4 who, who's gonna need to know your name before you start
5 speaking again.
6 FEMALE SPEAKER: Sure. Sure.
7 ZONING EXAMINER: So just -
8 FEMALE SPEAKER: Absolutely.
9 ZONING EXAMINER: - alternate each time you use your
10 name.
11 FEMALE SPEAKER: All right.
12 FEMALE SPEAKER: (Inaudible) sign in first?
13 ZONING EXAMINER: Yes.
14 MS. ROSS: Can I say my name while she's signing in?
15 ZONING EXAMINER: Sure.
16 MS. ROSS: Okay. My name is Tracy Lynn Ross, and I
17 live at 8955 East Harborage Drive.
18 MS. TURKIN: My name is Kelly Turkin. I live at 9231
19 East Old Spanish Trail. I am directly across from this well.
20 Wouldn't even know the well was there. That's how discreet it

1 is. Also been living there for 26 years.
2 ZONING EXAMINER: Across which way?
3 MS. TURKIN: I am north of it.
4 ZONING EXAMINER: North. There's not - you don't have
5 the Volkswagen collection? There's a -
6 MS. TURKIN: No.
7 ZONING EXAMINER: Okay. That's -
8 MS. TURKIN: I'm not the Turkos (ph.).
9 ZONING EXAMINER: Okay.
10 MS. TURKIN: That's the Turkos.
11 ZONING EXAMINER: All right.
12 MS. TURKIN: No. I'm, I'm what the neighborhood likes
13 to refer to as the compound.
14 ZONING EXAMINER: So you're, you're north of it.
15 All right.
16 MS. TURKIN: Yeah, we live on two acres there. And
17 we've been living there for twenty - let's see. Twenty-six
18 years. Have been provided by a fabulous well water company. I
19 have no complaints. In the many years we've been there, we have
20 been serviced well with water.

3.1 WATER SYSTEM ZONE BOUNDARIES

The Halcyon Acres Annex No. 2 water pressure standard is 45 pounds per square inch (psi) minimum and 75 psi maximum for water services as measured at the meter. The elevation range over the water system is approximately 2,690 to 2,760 feet. The theoretical highwater elevation of the zone is 2,869 feet, and the water plant site elevation is 2,742 feet.

3.2 FIRE FLOW CRITERIA

It has been assumed that the fire flow requirements associated with this property will be provided by fire hydrants served from the adjacent Tucson Water system, therefore, fire flow capacity is not considered in the sizing of the Halcyon Acres water facilities. The previous plan for the Presidio Trail subdivision included fire flow to the development through a series of fire hydrants surrounding the outer boundary of the development area. The new multi-family use may require a higher fire flow and additional fire hydrants, including some hydrants that would need to be located within the boundaries of the property. The ability of the Tucson Water system to provide the required fire flow, and to serve fire flow and building sprinklers within the project boundary will be verified directly with Tucson Water.

3.3 SOURCE CRITERIA

Under the current operating scenario with a single well and no storage and booster station capacity, the total source requirement for the existing water system is based on meeting maximum instantaneous demand for the entire Halcyon Acres Annex No. 2 service area. Because a reservoir and booster station will be added due to the significant additional demands on the system, the source requirement can be calculated based on the PDD of the overall water system. Source capacity would typically be provided with a redundant well to allow for a well outage. However, because this system will have a backup water supply available from Tucson Water, redundant well capacity is not considered.

3.4 STORAGE CRITERIA

The reservoir will be sized according to ADEQ Engineering Bulletin No. 10 criteria and the Arizona Administrative Code (AAC). The minimum storage capacity for systems not providing fire flow should be average day of peak month (ADPM).

3.5 BOOSTER STATION CRITERIA

The booster station serving the Halcyon Acres water system must be capable of providing for the peaking demands of the water system. Depending on the size of the water system, there are engineering criteria regarding delivery rates based on maximum instantaneous demand per ADEQ Engineering Bulletin No. 10 for areas serving less than approximately 200 homes, peak hour demand (PHD) for larger areas, and plumbing code requirements for peak usage based on fixture units for commercial properties. Because this project is a combination of several of the usage scenarios, a hybrid demand calculation will be used, based on plumbing code demands for the multi-family and non-residential uses, and maximum instantaneous demand for the single-family units. It is assumed that fire flow will be provided by existing

Tucson Water pipelines, and the booster station does not need to be sized to provide fire flows. It is assumed that fire sprinkler flows would not occur at the same time as peaking demands per the plumbing code, and the booster station will not be sized to serve both sprinkler flow and peaking flows simultaneously.

3.6 DISTRIBUTION SYSTEM CRITERIA

The design criteria for the distribution system is generally to size and arrange the distribution lines to provide the required flows while meeting the ADEQ requirement to maintain 20 psi under all conditions of flow. The standard water main sizing criteria limits velocities to a maximum of 5 feet per second under peak-day conditions. In addition, velocities shall not exceed 10 feet per second under the highest peak conditions, which is typically peak day plus fire flow, but in this case would be the maximum instantaneous flow. Pipeline sizes must be designed to maintain adequate pressures throughout the system. The maximum friction head loss for lines up to and including 8 inches in size is to be 8 feet per 1,000 feet or less.

3.7 DEMAND CRITERIA AND CALCULATIONS

The demand criteria for new units in the master plan are based on standard engineering practice for master planning in the Tucson area, most of which is based on usage rates, residency rates, and peaking factors from Arizona Department of Water Resources (ADWR) and typical water system data. Data from the existing Halcyon Acres water system is also considered in the determination of demands.

Data from the planning document for the JTED site has been utilized for projection of the demands for that project. Based on historical data for other JTED school sites, the engineer for that project believed that the demands projected using typical ADEQ usage rates for schools were considerably higher than they expected for the actual demands at the site. However, the more conservative ADEQ projections for the site usage have been provided in this document. Plumbing code criteria for demands based on fixture units will be considered for the peaking associated with the JTED site and the apartment complex uses. Based on these data, the following usage and peaking criteria will be utilized:

Residential Uses

Single Family Residential

- Average daily per connection water usage for existing single-family residential 670 gpcd
- Average daily per capita water usage for planned single-family residential 110 gpcd
- Average number of persons per planned single-family residential unit 2.7 pphu
- Average daily per connection water usage for planned single-family residential 297 gpcd

Multi-Family Residential

- Average daily per capita water usage for planned multi-family residential 110 gpcd
- Average number of persons per planned multi-family residential unit 2.0 pphu
- Average daily per connection water usage for planned multi-family residential 220 gpcd

School

- Average daily per student water usage for school 43 gpd/student

Peaking Factors

- Ratio of peak-day to average-day use 2.0
- Ratio of peak-hour to average-day use 3.5
- Ratio of average day of peak month to average-day use 1.5
- Maximum instantaneous flow per ADEQ Bulletin No. 10
- Peaking flow for school and apartment complex use from plumbing code fixture unit requirements

Halcyon Acres Demands – Current, Committed, and FutureHalcyon Acres Annex No. 2 Single Family Residential (approximately 36 existing lots, including one lot used for automotive repair shop, and 6 future lots)

Average Daily Demand (ADD) = 42 connections (at buildout) x 670 gallons/connection/day = 28,140 gallons/day (gpd) = 20 gpm

Average Day Peak Month Demand (ADPM) = 1.5 x 28,140 = 42,210 gpd

Peak Daily Demand (PDD) = 2 x ADD = 2 x 20 gpm = 40 gpm

Peak Hour Demand (PHD) = 3.5 x ADD = 3.5 x 20 gpm = 70 gpm

Maximum instantaneous flow (ADEQ Bulletin No. 10) = 95 gpm

Non-Residential – JFED Phases 1 and 2 (Phase 1 Constructed, other buildings planned for 2012 or later)

Average Daily Demand (ADD) = 260 students x 46 gallons per day per student = 11,180 gpd = 8 gpm

Average Day Peak Month Demand (ADPM) = 1.5 x 11,180 = 16,770 gpd

Peak Daily Demand (PDD) = 2 x ADD = 2 x 8 gpm = 16 gpm

Peak Hour Demand (PHD) = 3.5 x ADD = 3.5 x 8 gpm = 28 gpm

Maximum instantaneous flow (plumbing code requirements) = 39 gpm

Single Family Residential – Camino Seco Village (Platted but not developed)

Average Daily Demand (ADD) = 35 units x 2.7 pphu x 110 gpcd = 10,395 gpd = 7 gpm

Average Day Peak Month Demand (ADPM) = 1.5 x 10,395 = 15,593 gpd

Peak Daily Demand (PDD) = 2 x ADD = 2 x 7 gpm = 14 gpm

Peak Hour Demand (PHD) = 3.5 x ADD = 3.5 x 7 gpm = 25 gpm

Maximum instantaneous flow (ADEQ Bulletin No. 10) = 84 gpm

Multi Family Residential – The Place at Presidio Trails (Planned)

Average Daily Demand (ADD) = 208 units x 2.0 pphu x 110 gpcd = 45,760 gpd = 32 gpm

Average Day Peak Month Demand (ADPM) = 1.5 x 45,760 = 68,640 gpd

Peak Daily Demand (PDD) = 2 x ADD = 2 x 32 gpm = 64 gpm

Peak Hour Demand (PHD) = 3.5 x ADD = 3.5 x 32 gpm = 112 gpm

Maximum instantaneous flow (plumbing code requirements):

- Building Type A – 7 Buildings at 162 fixture units and 58 gpm
- Building Type B – 6 Buildings at 138 fixture units and 53 gpm
- Recreation Building – 1 Building at 21 fixture units and 15 gpm

- Maintenance Building – 1 Building at 9 fixture units and 8 gpm
- Summed building demands total approximately 750 gpm
- Pool-filling demands are assumed to occur in off-peak periods.
- Building sprinkler demands are not assumed to occur simultaneously with peaking flows per the plumbing code.
- Aggregated Demands for the Apartment Complex = approximately 1,992 fixture units and 325 gpm.

SECTION 4 – INFRASTRUCTURE REQUIREMENTS

In accordance with the criteria in Section 3 and water usage rates, the requirements for water system facilities were analyzed to determine the capacity of the facilities to serve the buildout of the Halcyon Acres Annex No. 2 development. This analysis is provided in the following sections.

4.1 WATER SERVICE CONCEPT

The Halcyon Acres service area will be served by an existing well using a new reservoir and booster station to maintain system pressure. Demands will be determined under a PDD scenario for well capacity, ADPM for storage capacity, and maximum instantaneous demand for booster station capacity. Calculated capacities for the various facilities are described in the following sections.

4.2 SOURCE REQUIREMENTS

The total source requirement for the water system is based on meeting PDD for the service area. PDD for the entire Halcyon Acres Annex No. 2 service area has been calculated as approximately 134 gpm, which is the volume of water that must be withdrawn from the existing water company well. The existing well is currently reported to provide approximately 130 gpm, and had been reported to provide 150 gpm in previous planning documents. Additional information indicates that the well is capable of a total capacity of 165 gpm. Therefore, it is believed that the existing well will be capable of the service required for buildout of the current water system planning, although some upgrades to the well may be required prior to buildout.

The existing well will be modified to feed directly into the proposed storage tank. The well will need to be switched from pressure to level control. Because the new pumping condition will be at a significantly lower head than the existing condition, the well pump must be analyzed during final design to determine how to best modify the well pumping system to develop adequate flow during PDD at the lower TDH. It is likely that several existing pump bowls would be removed to provide the required flow at a lower TDH due to pumping to the reservoir, but it is possible that an entirely new pump would be recommended. It is recommended the pump volume be designed for the higher flow of 150 to 165 gpm to allow for some additional capacity above the calculated PDD. Well capacity testing and a well video should be performed when the pump is removed for servicing and bowl/pump adjustment.

In addition, a second 2-inch metered connection between Tucson Water and Halcyon Acres is recommended to provide the daily demands to Halcyon if their well is out of service for any reason. The

new metered connection will be plumbed directly into the proposed reservoir, with manifold piping to allow for service directly to the system, if desired. The existing 2-inch metered connection will remain connected directly to the Halcyon system.

4.3 STORAGE RESERVOIR SIZING

In accordance with the water service concept described above, a reservoir is proposed to serve the Halcyon Acres Annex No. 2 service area. The sizing calculations for this reservoir are based on providing average day of peak month for the entire service area. The reservoir must therefore, include approximately 143,000 gallons of usable storage. Final gross capacity will be determined by design configuration of the reservoir. Approximately half of the storage capacity is provided for the demands of The Place at Presidio Trails.

4.4 BOOSTER STATION REQUIREMENTS

The proposed booster station must be capable of moving the source water throughout the water system at a rate equal to instantaneous demand for the various uses within the system. Capacity for the booster station is based upon instantaneous demands according to ADEQ Engineering Bulletin No. 10 and plumbing code requirements. The plumbing code demands for the apartment complex are assumed to be aggregated for the overall complex for purposes of sizing the booster station, although some flexibility to provide instantaneous demand spikes should be considered in the booster pump selection. The recommended configuration and sizing for the booster pump station a packaged, skid-mounted vertical multi-stage pump station with variable frequency drives (VFDs), with three pumps sized to provide approximately 200 to 250 gpm each and room for a spare pump. It is assumed that the pumps will be three 15 HP units. Approximately two-thirds of the booster station capacity is provided to supply the demands of The Place at Presidio Trails. A large hydropneumatic tank is not required for a VFD pumping system, and because the existing tank is an older facility, it is recommended that this tank be removed from service and the new booster station be served with an ASME bladder tank for pressure control for the booster station.

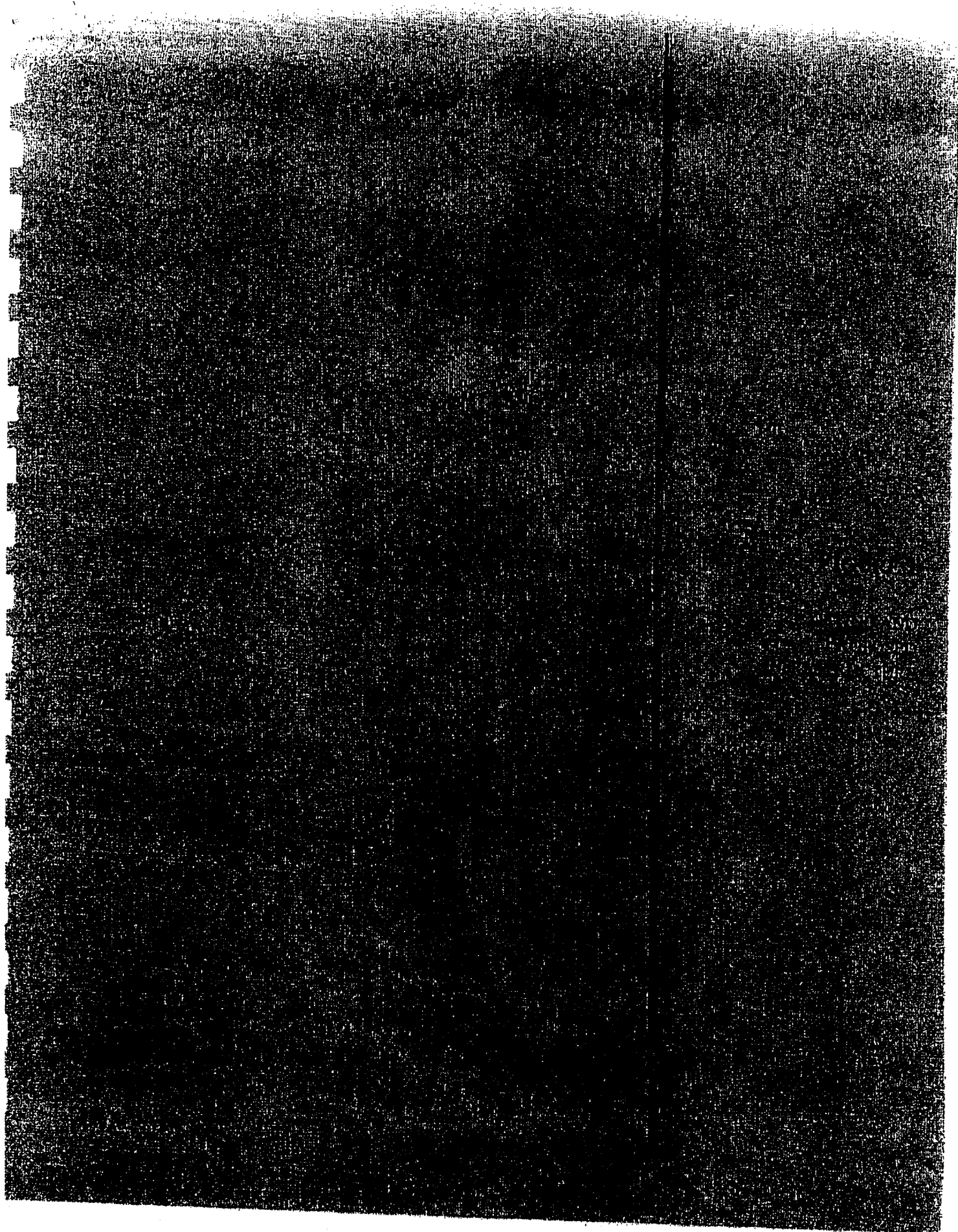
This booster station will be located at the well site and will deliver from the proposed on-site reservoir to the Halcyon Acres water system via 8-inch manifold and site piping. The booster station will be pressure-controlled by the pressure in the Halcyon Acres water system. The pressure at the booster station location is anticipated to be 7 psi on the suction side and approximately 55 psi on the discharge side.

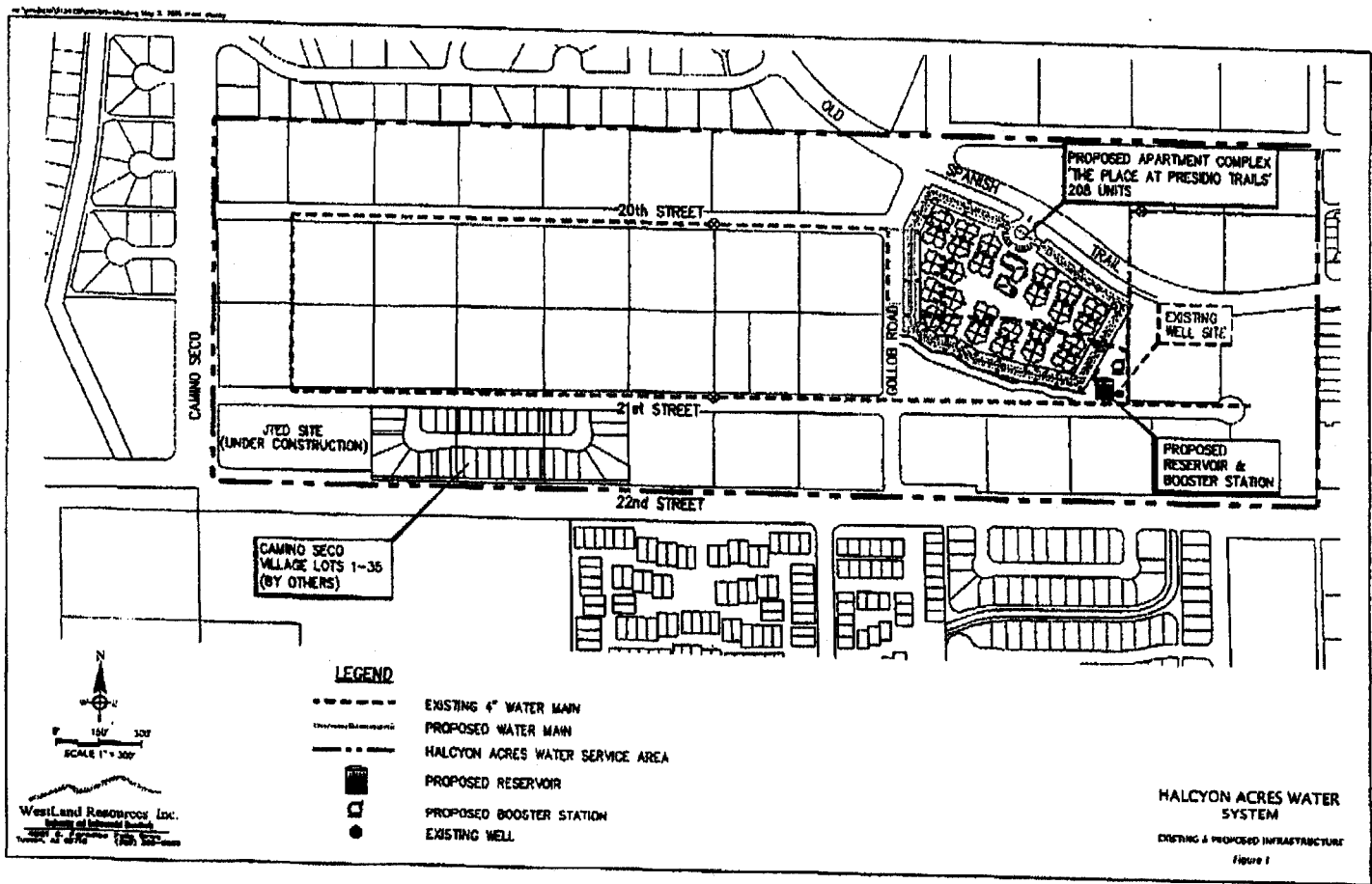
4.5 PIPELINE REQUIREMENTS

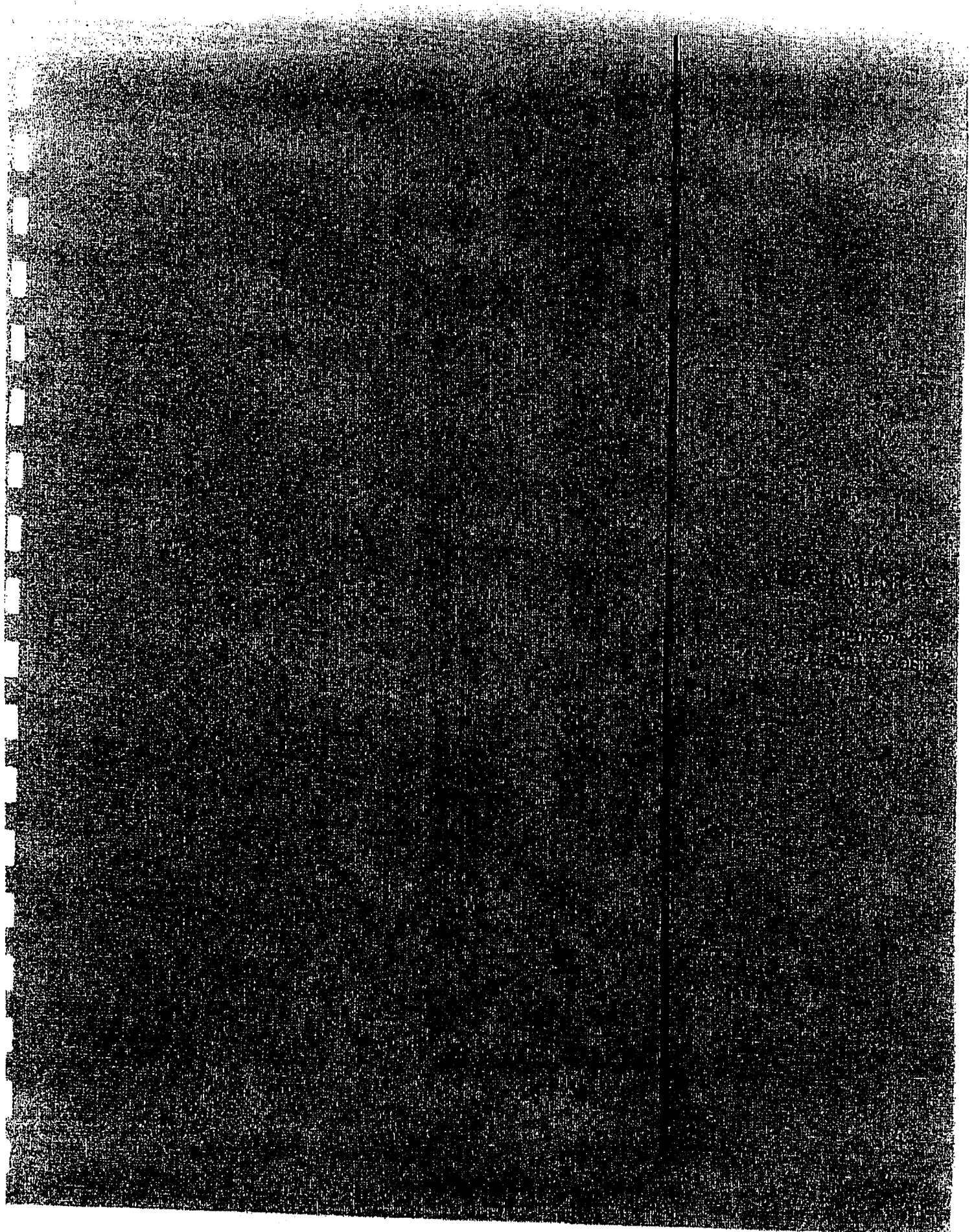
The proposed water pipeline within the site will be 8-inch to provide PDD to the system while keeping velocity below 5 feet per second. Based on the flow velocity and looping through the complex, it is also assumed that 8-inch pipelines will be sufficient for the delivery of flows to the apartment complex buildings, and 6-inch pipelines may be sufficient in certain areas.

SECTION 5 – INFRASTRUCTURE COSTS

The Opinion of Probable Construction Cost (OPCC) for the new reservoir and booster station facilities are included in Appendix A. The total cost for the proposed facilities is \$490,000.







**PRELIMINARY FOR CLIENT REVIEW
OPINION OF PROBABLE CONSTRUCTION COST**

Project Name:	The Place at Presidio Trails	Prepared by:	Craig Cannizzaro	6-27-12
Project No.	1134.06	Checked by:	Mark Ostermann	6-27-12
Location:	Pima County, Arizona	Client:	Acorn Associates	
Description:	Water Plant Improvements for Halcyon Acres Water			

Item No.	Item Description	Unit	Quantity	Unit Price	Amount	Remarks
1	Furnish and install new 150,000 gallon steel reservoir	LS	1	\$190,000	\$190,000	Includes 5' over-excavation and compaction
2	Complete all site work and grading per plans	LS	1	\$20,000	\$20,000	Includes all site grading, concrete approach, gravel and relocation of wood shed
3	Furnish and install all site piping including appurtenances	LS	1	\$30,000	\$30,000	
4	Furnish and install 8-foot high screen wall per plans	LF	360	\$125	\$45,000	Includes barbed wire
5	Furnish and install new access gate per plans	LS	1	\$3,500	\$3,500	Gate to be modified for larger opening than T.W. standard
6	Furnish and install packaged booster station per plans	LS	1	\$95,000	\$95,000	Includes pressure relief valve, bladder tank, booster station shade structure/electrical rack and control panel
7	Furnish and install all electrical and controls per plans	LS	1	\$48,000	\$48,000	
8	Complete all well pump modifications per plans	LS	1	\$8,000	\$8,000	Assumes a welded steel tank with total storage for the zone being built in Phases.
	Subtotal				\$439,500	
	15% Contingency				\$65,925	
	Total				\$505,425	

Notes: Costs are based on current construction cost and must be adjusted to match industry fluctuations

OPINION OF PROBABLE CONSTRUCTION COST

Project Name: Halcyon Acres Water System Upgrades
Project No. 1134.05
Location: 22nd/Camino Seco
Description: Reservoir, Booster, and Well Upgrade

Prepared by: MDO
Checked by: KDF
Client: MC Companies
Date: 5/4/11
Date: 5/4/11

Item No.	Item Description	Unit	Quantity	Unit Price	Amount	Remarks
Water System Upgrades Overall Cost						
1	Remove/reinstall pump with bowl adjustment	LS	1	\$9,000	\$9,000	
2	Replace well pump	LS	1	\$8,000	\$8,000	Additional cost, if pump replacement is determined necessary upon pump review
3	143,000 gallon tank	LS	1	\$170,000	\$170,000	Including gravel, ring, over-excavation, re-compaction
4	600 gpm booster pump station	LS	1	\$100,000	\$100,000	Pre-packaged pump station with VFDs, including electrical and controls
5	Masonry wall	LF	350	\$140	\$49,000	
6	Site work	LS	1	\$10,000	\$10,000	
7	Bladder tank	LS	1	\$2,000	\$2,000	100 gallon ASME code tank
8	Site and manifold piping	LS	1	\$15,000	\$15,000	4-inch well piping, 8-inch booster suction and discharge piping
9	Miscellaneous concrete	LS	1	\$9,000	\$9,000	
10	New 2-inch meter connection	LS	1	\$20,000	\$20,000	
	Subtotal				\$392,000	
	25% Engineering, Permitting, Inspection & Contingencies				\$98,000	
	TOTAL				\$490,000	

EXHIBIT “B”



Transmittal Letter

To: Ricardo O. Mesa 321-4625
ENGINEERING AND ENVIRONMENTAL CONSULTANTS, INC.
4625 East Fort Lowell Road, Suite 100
Tucson, AZ 85712

From: Tri Miller / cj

Date: July 13, 2012

Subject: THE PLACE AT PRESIDIO TRAIL - HALCYON WATER PLAN, 3RD SUBMITTAL

Job No.: 3873-A

How Sent: Delivery

We are transmitting the following attached items:
If items are not attached as indicated, please notify us immediately

No. of Copies	Document Date	Description
1 Set	7-12-12	Copy, Revised Halcyon Public Water Plan
1	6-19-12	Copy, Redlines from 1 st Review
1	7-12-12	Copy, Tucson Water Plan
1	7-11-12	Original, Legal Description for Proposed Easement
1	7-12-12	Updated Cost Estimate

Transmitted For: Approval / Review & Comment

Remarks:

Copy To: File

H:\3873 - Presidio Trail\Transmittals\EEC_RMesa_halcyon wtr plan 3rd submit.doc

3945 East Fort Lowell Road • Suite 111 • Tucson • Arizona • 85712 • (520) 795-1000 • Fax: (520) 322-6956 • www.rickengineering.com

COST ESTIMATE & MATERIAL TAKE-OFF

NAME: THE PLACE AT THE PRESIDIO TRAIL, BUILDINGS 1-1

PLAN NO: ---

Date: 07.12.12

This project is installing Potable Mains _____ Reclaimed Mains _____

This project is located entirely/partly within the _____ service area.

This project is located entirely/partly within _____ City/Town Limits.

<u>Quantity</u>	<u>Size</u>	<u>Item</u>	<u>Cost</u>	<u>Total Cost</u>
	8" PVC	Pipe	@ \$38.00 LF =	\$0.00
	6" PVC	Pipe	@ \$30.00 LF =	\$0.00
	4" PVC	Pipe	@ \$23.00 LF =	\$0.00
		Pipe	@ =	
1,440 LF	6"	D.I. Pipe	@ \$62.00 LF =	\$89,280.00
		D.I. Pipe	@ =	\$0.00
	8"	Valves, B & C	@ \$1,100.00 EA =	\$0.00
5	6"	Valves, B & C	@ \$750.00 EA =	\$3,750.00
	4"	Valves, B & C	@ \$510.00 EA =	\$0.00
		Valves, B & C	@ =	\$0.00
	12"x8"	Tapping Sleeve & Valve, B & C	@ \$2,900.00 EA =	\$0.00
	8"x8"	Tapping Sleeve & Valve, B & C	@ \$2,500.00 EA =	\$0.00
1	4"x4"	Tapping Sleeve & Valve, B & C	@ \$1,400.00 EA =	\$1,400.00
	2"	Drain Valve Assembly (Paved Area)	@ =	\$0.00
		Fire Hydrants	@ \$2,900.00 EA =	\$0.00
10 SY		Paving Repl. 6"ABC 2" Asphalt	@ \$60.00 SY =	\$600.00
		Paving Repl. 6"Conc. 2" Asphalt	@ =	
		3/4" Air Release Valve Assembly	@ =	
3	1"	Air Release Valve Assembly	@ \$1,450.00 EA =	\$4,350.00
TOTAL ESTIMATE				= \$131,380.00

Total Estimate Includes, Does not include Items from Supplementary Sheet

Plan No. _____

SUPPLEMENTARY SHEET

	1 ½" & 2" Copper Pipe with fittings	@	=	\$0.00
	1" Copper Pipe with fittings	@	=	\$0.00
	2" Copper Pipe <u>only</u> without fittings	@	=	\$0.00
	1 ½" Copper Pipe <u>only</u> without fittings	@	=	\$0.00
	1" Copper Pipe <u>only</u> without fittings	@	=	\$0.00
	1 ½" & 2" Service Tie-Over	@	=	\$0.00
	¾" & 1" Service Tie-Over	@	=	\$0.00
	1 ½" & 2" Service Renewals	@	=	\$0.00
	¾" & 1" Service Renewals	@	=	\$0.00
	1" & ¾" New Split Water Service Stub	@	\$1,200.00 EA =	\$0.00
16	2" New Water Service Stub	@	\$2,000.00 EA =	\$32,000.00
	1½" New Water Service Stub	@	=	\$0.00
	1" New Water Service Stub	@	\$925.00 EA =	\$0.00
	Casing for Boring	@	=	\$0.00
	Piling for River Crossing	@	=	\$0.00
	Pressure Reducer Valve	@	=	\$0.00
	Check Valve	@	=	\$0.00
	Modified Drain Valve Assembly	@	=	\$0.00
	@	=	\$0.00
	@	=	\$0.00
	@	=	\$0.00



**LEGAL DESCRIPTION
PRIVATE WATER LINE EASEMENT**

THOSE PORTIONS OF **PRESIDIO TRAIL**, A SUBDIVISION OF PIMA COUNTY, ARIZONA, ACCORDING TO THE PLAT RECORDED IN BOOK 63 OF MAPS AND PLATS AT PAGE 67, RECORDS OF THE PIMA COUNTY RECORDER, BEING WITHIN THE SOUTH HALF OF SECTION 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, CITY OF TUCSON, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

A 15.00 FOOT WIDE STRIP OF LAND LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

LINE 1

COMMENCING AT A 2 INCH BRASS DISC AT THE CENTERLINE INTERSECTION OF 21ST STREET AND GOLLOB ROAD AS SHOWN ON SAID PLAT;

THENCE NORTH 00°28'37" WEST 536.16 FEET UPON THE CENTERLINE OF SAID GOLLOB ROAD;

THENCE NORTH 89°31'23" EAST 44.93 FEET TO THE **POINT OF BEGINNING** ON THE EAST RIGHT OF WAY LINE OF SAID GOLLOB ROAD AND THE WEST LINE OF SAID **PRESIDIO TRAIL**;

THENCE NORTH 89°30'49" EAST 32.00 FEET;

THENCE SOUTH 00°29'11" EAST 12.50 FEET TO **POINT "A"**;

THENCE CONTINUE SOUTH 00°29'11" EAST 200.50 FEET;

THENCE SOUTH 89°30'49" WEST 32.00 FEET TO SAID WEST LINE OF

PRESIDIO TRAIL;

THENCE NORTH 89°30'49" EAST 32.00 FEET;

THENCE SOUTH 00°29'11" EAST 62.32 FEET;

THENCE SOUTH 67°59'11" EAST 11.20 FEET TO A TANGENT CURVE CONCAVE NORTHERLY;

THENCE EASTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 07°48'52", FOR AN ARC DISTANCE OF 40.92 FEET TO A TANGENT LINE;

THENCE SOUTH 75°48'03" EAST 48.32 FEET TO A TANGENT CURVE CONCAVE SOUTHERLY;

THENCE EASTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 07°56'04", FOR AN ARC DISTANCE OF 41.54 FEET TO A TANGENT LINE;

THENCE SOUTH 67°51'59" EAST 197.63 FEET TO **POINT "B"**;

THENCE CONTINUE SOUTH 67°51'59" EAST 6.22 FEET TO A TANGENT CURVE CONCAVE NORTHERLY;

THENCE EASTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A

RADIUS OF 304.50 FEET AND A CENTRAL ANGLE OF 14°43'54", FOR AN ARC DISTANCE OF 78.29 FEET TO A TANGENT LINE;
THENCE SOUTH 82°35'54" EAST 62.08 FEET;
THENCE SOUTH 07°24'06" WEST 22.00 FEET;
THENCE NORTH 07°24'06" EAST 22.00 FEET;
THENCE SOUTH 82°35'54" EAST 14.87 FEET;
THENCE NORTH 74°54'06" EAST 10.45 FEET;
THENCE SOUTH 82°35'54" EAST 116.18 FEET;
THENCE NORTH 29°05'08" EAST 76.85 FEET TO POINT "C";
THENCE CONTINUE NORTH 29°05'08" EAST 71.20 FEET;
THENCE SOUTH 60°54'52" EAST 32.00 FEET TO THE EAST LINE OF SAID

PRESIDIO TRAIL;

THENCE NORTH 60°54'52" WEST 32.00 FEET;
THENCE NORTH 29°05'08" EAST 101.65 FEET TO A TANGENT CURVE CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 06°59'43", FOR AN ARC DISTANCE OF 36.63 FEET TO A TANGENT LINE;

THENCE NORTH 22°05'25" EAST 42.02 FEET;

THENCE NORTH 00°24'35" WEST 33.92 FEET TO THE POINT OF TERMINUS OF SAID LINE 1 ON THE NORTH LINE OF SAID PRESIDIO TRAIL, SAID NORTH LINE BEING THE ARC OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 766.20 FEET, THE RADIUS POINT OF SAID ARC BEARS NORTH 27°28'05" EAST FROM SAID POINT OF TERMINUS.

SAID 15.00 FOOT WIDE STRIP TO BE LENGTHENED OR SHORTENED TO BEGIN ON SAID WEST LINE, TO BE BOUNDED BY SAID WEST AND EAST LINES AND TO TERMINATE ON SAID NORTH LINE, INTERSECTING AT ANGLE POINTS.

TOGETHER WITH 25.00 FOOT WIDE STRIPS LYING 12.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINES:

LINE 2

BEGINNING AT SAID POINT "A";

THENCE NORTH 89°30'49" EAST 46.00 FEET TO THE POINT OF TERMINUS.

LINE 3

BEGINNING AT SAID POINT "B";

THENCE NORTH 22°08'01" EAST 46.00 FEET TO THE POINT OF TERMINUS.

TOGETHER WITH A 27.50 FOOT WIDE STRIP LYING 13.75 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

LINE 4

BEGINNING AT SAID POINT "C";

THENCE NORTH 60°54'52" WEST 46.00 FEET TO THE POINT OF TERMINUS.

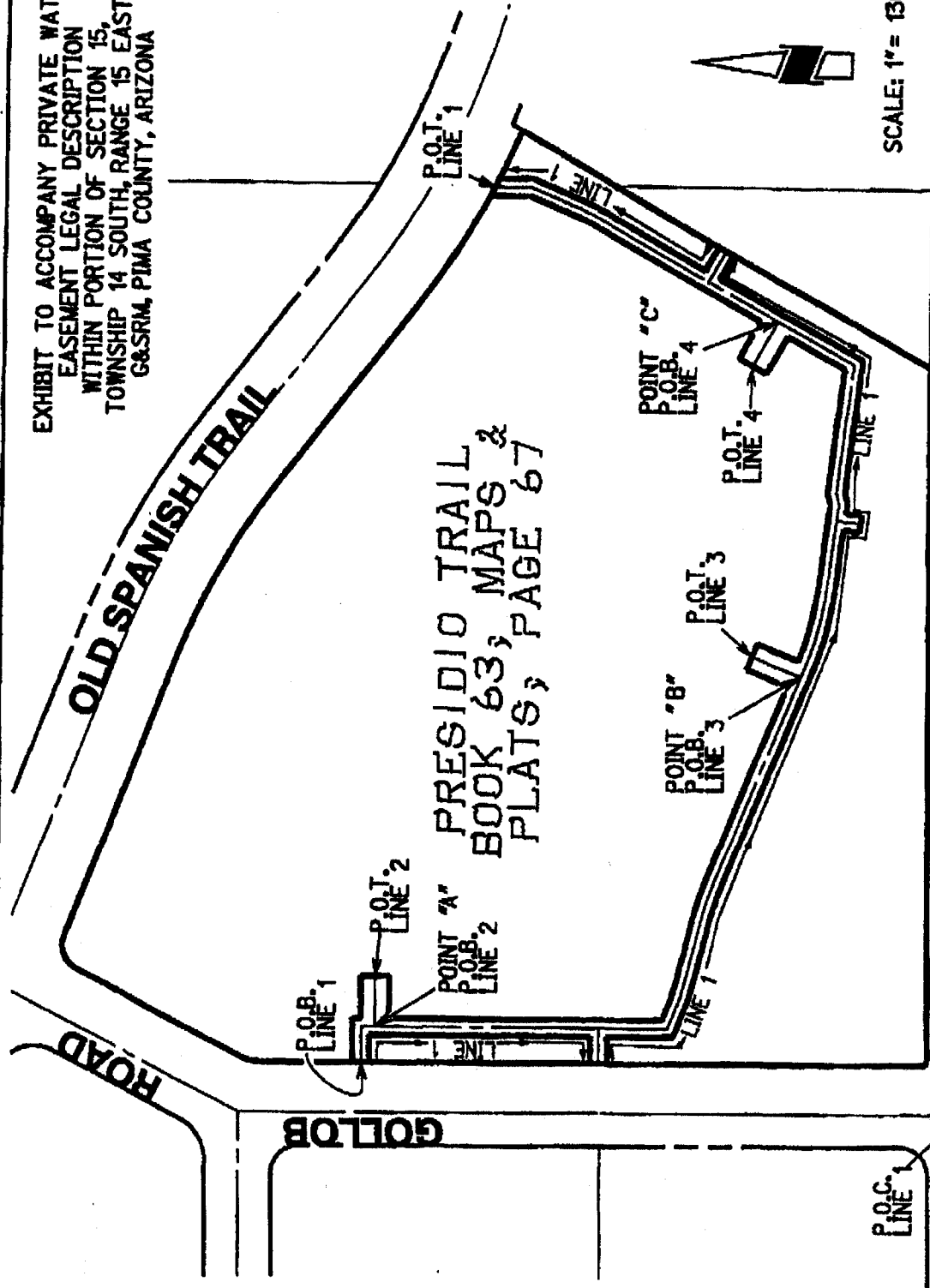
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REVISED: 7/11/12



EXHIBIT TO ACCOMPANY PRIVATE WATER
EASEMENT LEGAL DESCRIPTION
WITHIN PORTION OF SECTION 15,
TOWNSHIP 14 SOUTH, RANGE 15 EAST,
G&SRM, PIMA COUNTY, ARIZONA

OLD SPANISH TRAIL

PRESIDIO TRAIL
BOOK 63, MAPS 3
PLATS, PAGE 67



21ST STREET

3945 EAST FORT LOWELL ROAD - SUITE 111
TUCSON, AZ 85712
520.795.1000
(FAX) 520.322.6956

RICK
ENGINEERING COMPANY

1 Maybe a couple of times we've had some shutoffs, but
2 nothing horrible. It has serviced us well. I have no
3 complaints. I have no desire for it to change whatsoever. I
4 agree with everyone here as far as that's concerned. You want
5 to talk about -
6 MS. ROSS: Okay. This is Tracy talking again. I want
7 to address the issue of the well water, the well is being
8 changed because of the apartment complex, and the context of how
9 the apartment complex will affect the neighborhood.
10 I work at the school that is on Gollob Road. And the
11 traffic, the impact of traffic in and out of the school is gonna
12 be hugely impacted. The enrollment of the school is going to be
13 - I'm not sure how that's gonna actually - it's gonna impact
14 that hugely also. We don't have much room in that little
15 school.
16 MS. TURKIN: We're at maximum capacity.
17 MS. ROSS: So I just wanted you to be also aware of
18 there's other impacts in that little, tiny neighborhood. And
19 the school is a big part of that little, tiny community.
20 MS. TURKIN: Yeah. If I can address that. I'm the

1 office manager at Gill Elementary as well. So I not only live
2 in the community, my children have been raised in this
3 community, I work in the community. It's hugely important to
4 me.
5 We have, my husband and I have been involved in a lot
6 of projects around Halcyon Acres. We're very involved. We are
7 also one of the families that the bobcats have their babies on
8 our property. And I'd like them to continue to feel safe and
9 sound and have their babies on our property.
10 But it does hugely impact the school. We - our school
11 is an excellent school. We get 40% open enrolled students
12 because we are a very highly rated school, mostly due to because
13 we have a great officer manager and an art teacher.
14 ZONING EXAMINER: And that's on the record.
15 MS. TURKIN: No. Really we, we really have an awesome
16 principal. It's a great school. One of the reasons when we
17 promote our school is we - I promote a small, neighborhood-
18 friendly school. That is what it is. That is what Halcyon
19 Acres is. When you add a demographic of an apartment complex to
20 it, you're talking a whole new demographic area with students.

1 The parents don't want it.
2 We also do have a safety concern. We don't even have
3 a crossing guard that takes our kids from behind the rear of the
4 school across Spanish Trail. We have no safety there. We have
5 no sidewalks on Gollob. There is no way to get students across
6 Spanish Trail safely.
7 I cannot tell you how many times I've woken up on my
8 way to work. We had a truck in the tree in our front yard.
9 I've called on motorcycle accidents. We've had many, many
10 accidents. There's a huge curve right there. It cannot support
11 anymore traffic as well.
12 Again, it's a very small, fabulous community. We
13 would not like to have any changes. Everything that has been
14 spoken here is so true. And this is a wonderful community, and
15 we'd like to keep it that way.
16 And, again, happy water people. We have a pool, we
17 have grass. Never had a problem with water. What's the reason
18 for the expansion? Nothing that I can think of. That it?
19 MS. TURKIN: (Inaudible) The petition.
20 MS. ROSS: Oh, and the petitions you collected, we

1 have collected plenty of petitions.
2 ZONING EXAMINER: Okay.
3 MS. TURKIN: And we have a lot more being signed.
4 MS. ROSS: We do.
5 ZONING EXAMINER: All right. Thank you.
6 MS. ROSS: A big community of involved parents, so
7 thank you very much for your time. I really appreciate it.
8 ZONING EXAMINER: I appreciate your time as well.
9 Thank you. Sir, that wasn't a closing remark, I was just
10 responding. Come on up.
11 MR. PEARSON: I'm the elder in the area.
12 ZONING EXAMINER: Wait 'til you get the microphone to,
13 to talk.
14 MR. PEARSON: This is off the record. My name is Don
15 Pearson. I live at 9161 East Magdalena which is just north of
16 the area in question, where the well site is.
17 I'm speaking because I'm appalled by all the
18 development in the area that has taken place since my family
19 moved there in 1947. I'm living in the same house now that my
20 folks and I built when I was two years old in 1947.

1 The reason I'm here now talking is because I want to
2 second the groundwater caused subsidence. I have a bachelor of
3 science degree from the University of Arizona, 1969, in geology.
4 I studied hydrology, and I'm appalled by the cracks in my
5 masonry house.
6 I attribute this to the over-use of water in the
7 Tucson sedimentary basin and I just don't think it's going to be
8 helped by a massive increase in size of the well on Annex No. 2.
9 Thank you.
10 ZONING EXAMINER: Thank you. Ma'am. No, you.
11 MS. LAWRENCE: My name is Thea Lawrence, and I live at
12 9070 East Old Spanish Trail. We lived in our house about 22
13 years. We have been a customer of the Halcyon Water Company for
14 that long.
15 I do find it kind of amazing that we never got a
16 notice, or I'm not aware of anybody else, a customer got a
17 notice touting the new improvements that needed to happen to our
18 well. The only reason we knew about it was the expansion of the
19 apartment complexes.
20 We are a low density area. I worry about water.

1 We've got 38 houses on there and to have to share that with
2 another 500 people or so, it just doesn't make sense. Improving
3 the well is certainly not going to increase our property value.
4 The apartments across the street are going to decrease our
5 property value.
6 We're worried about traffic. We're a tight-knit
7 community. We see each other walking up and down Old Spanish
8 Trail, in our neighborhoods. I just don't feel the well
9 expansion is going to be necessary whatsoever. We have no
10 problems with our water now. The only reason for the expansion
11 is for the apartments, and they don't belong there. Thank you.
12 ZONING EXAMINER: Thank you. I know there was
13 somebody else. Sir. Yeah.
14 MR. TURKIN: Hi. My name is Abe Turkin, and I live at
15 9231 East Old Spanish Trail. That's just north of the property,
16 and one of the closest ones to that new tank they want to build
17 there.
18 So I really think it's gonna be a gigantic eyesore,
19 and I don't think they should be allowed to put it closer to the
20 lot line. They should go by the rules which is four times the

1 height, which would be 44 feet from the, from the easement, or
2 the lot line that they're using. And I, I agree with everybody
3 else, and I think you shouldn't allow this to happen.
4 And I don't understand why the water company has that
5 much money, if it's a half a million or million dollars to help
6 36 water users, it doesn't make sense. So I don't think that's
7 what's going on, but that's a lot of money to, to help 36
8 homeowners get better water. Thank you.
9 ZONING EXAMINER: Thank you. Anyone else? All right.
10 There might be a few questions that I'd like to see if Mr. Yezzi
11 could address on engineering. Would you be able to shed some
12 light on the issues of - that you heard raised here tonight, at
13 least some of them on subsidence, the wash, flood control
14 issues, any engineering concerns that might have been brought
15 up.
16 MR. YEZZI: Yes. My name is Paul Yezzi with Rick
17 Engineering, 3945 East Fort Lowell Road. Couple of separate
18 issues. There'll be a full drainage report done with the
19 expansion of the development plan that's prepared for the
20 expansion of the well site.

1 And that drainage report will have to demonstrate
2 conformance to the City's Flood Plain Ordinance. In addition to
3 that, as Frank mentioned earlier, we're not touching the Robb
4 Wash. It's a wash, ordinance wash and we're specifically
5 staying out of there.
6 I think something that's, that's lost is that - well,
7 I'll just respond to some of the other questions. This project,
8 the apartment project does not require a hundred-year water
9 supply through ADWR. And the reason for that is that the, the
10 state regulations require that when you're creating a
11 subdivision of six or more lots, and we are not. These are
12 rental units, so there is no requirement for that, that study.
13 However, prior, in 2006, the site of the apartments
14 was platted for 50 single-family homes. There was a water
15 supply study done at that time. I have a copy of it. It was
16 prepared by Clear Creek Associates, and it was the basis for
17 which ADWR issued a hundred-year assured water supply for that
18 project.
19 I, I'm not a hydro-geologist. I've read the analysis.
20 I have a copy to enter into the record. The, the most

1 significant findings of the analysis were that without any other
2 pumping, any other pumping, the, the water table in this region
3 is declining by 1.85 feet a year.

4 So over a hundred-year period, which is what the
5 studies require to evaluate it, the water table would go down
6 185 feet without any additional pumping.

7 Based on the analysis for the 50-lot subdivision, the,
8 the pumping rate was 31-acre feet a year. And that dropped the
9 water table an additional 3.9 feet in 100 years. So the -

10 ZONING EXAMINER: That was, that was for the 50-lot
11 subdivision?

12 MR. YEZZI: Correct.

13 ZONING EXAMINER: Okay.

14 MR. YEZZI: So I can simply extrapolate on that.
15 The apartment complex, the, the rate of use would be 40-acre
16 feet per year, not 31. It would essentially - you could look at
17 it as doubling that rate, which means that you're looking at a,
18 at a additional four feet of decline or a total of eight feet
19 over a hundred-year period. It's nothing in comparison to
20 what's happening regionally.

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1 And again, all of it falls within the parameters of if
2 we were required to get a hundred-year assured water supply, we
3 would have met the criteria, the same criteria that was met in
4 2007. So that, that's one issue related to that.

5 The second is there are number undeveloped parcels
6 within the Halcyon Annex No. 2, CCN that have greater than the
7 SR zoning. There's one parcel that's O-3. There's several
8 other parcels that are zoned commercial. And there's a platted
9 35-lot subdivision along 22nd Street that any of which at
10 sometime are gonna require service from the water company. Any
11 one of those developments would trigger expansion of the well
12 site.

13 It's not just - it, it happens in this case that the
14 apartments are first. But if there were a buyer for the 35 lots
15 on 22nd Street, they would be in exactly the same position here
16 before you to look for an expansion of that site.

17 In 2007, for whatever reason the interpretation was
18 made by Staff that the improvements required to support the, the
19 50-lot subdivision did not require the special exception land
20 use. At that time, there was a 14-foot high tank, 123,000

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1 gallons of storage proposed and processed through the City.
2 That work was never constructed because the economy went, went
3 the tubes (sic).

4 So today, we're looking at a tank that's two feet
5 higher and approximately 25,000 more gallons of storage from
6 what was previously proposed in 2007. I don't know if that
7 addressed the questions you had, Mr. Kafka.

8 ZONING EXAMINER: It does. Thank you. I'm just
9 making some notes. May take a moment. Was that the, the 2006 -

10 MR. YEZZI: 2007 -

11 ZONING EXAMINER: 2007.

12 MR. YEZZI: - report.

13 ZONING EXAMINER: Okay.

14 MR. YEZZI: There's about 200 pages of appendices
15 which I did not copy, but I'm happy to provide you if you'd
16 like.

17 ZONING EXAMINER: Yeah. Yeah, if you can get those to
18 Mr. Wyneken if they're scanned and just e-mail them or submit
19 them, and then I can take a look at them.

20 MR. YEZZI: Okay.

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1 ZONING EXAMINER: I'll only understand about 20 pages
2 of it, but -

3 MR. YEZZI: That's about where I'm at.

4 ZONING EXAMINER: All right. Maybe I can ask Mr.
5 Bangs some questions. So, I have a bit of a dilemma. There's a
6 certain framing of the issue that you put forward at the
7 beginning that would constrain my evaluation of the case. And
8 there's an argument that I shouldn't be constrained because you
9 can't look at the case outside of the context of a larger issue.
10 And maybe you can shed light on why I shouldn't look at the
11 larger issues, the context of the application versus the
12 specifics of just looking at the well site.

13 MR. BANGS: Thank you, Mr. Kafka. In part of my
14 answer, I'd like to, as some of the speakers said this evening,
15 draw a little bit on history. And if Mr. Wyneken will, will
16 indulge me, I'd just like to get these documents before you.

17 One of them is a map showing the boundaries of the
18 water company, it's certificate of convenience and necessity.
19 Another is the 1950 plat for Halcyon Acres Annex No. 2. The
20 Gollob family who got to name a street after themselves because

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1 they platted property they own.
2 In 1950, prepared a plat and indicated on that plat
3 the future use of what is now being described as the apartment
4 site, for promotional and residential purposes. Not very long
5 after that in the early 1960's, the owner of either that lot or
6 any of the remaining lots sought a rezoning from Pima County to
7 CB-1, commercial classification which would have permitted in
8 Pima County as equivalent zoning in the City, multi-family uses
9 as well as commercial business uses.
10 That zoning continued until 1984 when the City of
11 Tucson annexed the property, annexed the property as part of a,
12 of a two, two-square mile annexation area in which the City
13 promised all of the residents that it would provide water
14 service to residents. So all of the customers of both the water
15 company and the other company to the north, and the Halcyon
16 subdivision then received backup fire service which they would
17 not have put down.
18 And so I've also provided then the current zoning map
19 of the property. It simply underscores the point that Mr. Yezzi
20 just made that there are additional properties now that any one

1 of which would need the same kind of upgrades under current ADEQ
2 standards in order to provide service to them.
3 So this is not, I submit to you, a question about the
4 apartment project case. That is history that was decided a long
5 time ago. What the issue now is, is whether or not Halcyon
6 Acres is going to be allowed to upgrade its facilities to meet
7 current ADEQ standard that will have the impact of not only
8 upgrading service to the existing residents, but also to future
9 residents within its service area.
10 There is one other question that's been raised by one
11 of the last speakers, which Mr. Willcox could also address. But
12 I'm gonna take the liberty of doing it because I do know, and
13 I'm aware of the facts.
14 The cost of this upgrade which benefit all of the
15 existing customers is approximately \$500,000. And that will be
16 entirely funded by the developer of the apartment project. The
17 water company will not do that. So that is part of the current
18 agreement between them.
19 In addition, the water project will have to tie into
20 existing city lines in order to get the water - fire service.

1 So the answer is, there's no impact on, on customers in terms of
2 cost.
3 And as Mr. Yezzi, and I think that report will show to
4 you the, the impact on the future water supplies of the water
5 company is gonna be diminimus. It's no more so than anybody
6 else that's in the eastern end of the Tucson Basin.
7 To your, your (inaudible) question is I, I, I, I
8 think, and we submitted earlier, that your decision is, is
9 limited by the parameters of this application and, and the
10 finding requirements of, of the special exception use.
11 Again, this isn't a discretionary legislative
12 decision. It's not a rezoning case. We're approving an upgrade
13 to an existing private utility, something that all of the
14 residents of this area who are served by the water company
15 receive a benefit from. Unless you have any further questions
16 either of me or Mr. Yezzi, that concludes our remarks.
17 ZONING EXAMINER: Would the upgrade take place if not
18 for the apartment complex?
19 MR. BANGS: The answer is at this moment in time, no.
20 But -

1 ZONING EXAMINER: There could be other -
2 MR. BANGS: - there could be others and need the same
3 -
4 ZONING EXAMINER: And the entitlements are in place
5 for, for C-1 uses?
6 MR. BANGS: Correct. Actually it's more advanced than
7 that. The development plan for the project has already been
8 approved by the City. So its entitlements have gone down the
9 road even farther than that.
10 ZONING EXAMINER: How are you going forward on the
11 variance without - I mean without a decision in, in this case?
12 MR. BANGS: Well, the way Staff has structured this,
13 they want both of them to go together.
14 ZONING EXAMINER: Okay.
15 MR. BANGS: The - although Mr. Wyneken has not
16 suggested this, as a practical matter, the variances could not -
17 they'll be effective without this special exception land use and
18 vice versa. So they're, they're tied together.
19 ZONING EXAMINER: All right. Thank you.
20 MR. BANGS: Thank you.

1 ZONING EXAMINER: I see some other people want to
2 comment, and I'm gonna allow that. There's - let me just -
3 these three. You may sit down. But I may ask at the end of
4 those comments if Mr. Bangs or Mr. Yezzi have anything more that
5 they want to say and we could keep going like that, so -
6 MS. GLASS: Elizabeth Glass again at 8756 East
7 Harborage. I wanted to call into question the math from the
8 Halcyon Water Company 2's last comment. They said that if it
9 was 50 houses on that piece of property it would lower the water
10 table 30, 30 - by 30. But if you brought the apartment complex,
11 which is 200 households, it would only be 40. The numbers
12 should be closer to 120 because it's four times the density.
13 Thank you.
14 ZONING EXAMINER: Thanks. Sir.
15 MALE SPEAKER: (Inaudible)
16 ZONING EXAMINER: All right. I, I'm sorry. I saw
17 your hand but his head, so there was -
18 MS. SCHOCK: It's okay. It's late. Laurie Schock,
19 8751 East Harborage Drive. And I've never done any of this
20 before, so this is kind of a question type thing also.

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1 The gentleman that was up here earlier said something
2 about having a study done. Normally, if you're going to walk
3 into something and ask for a special permit, you would probably
4 do a study before you asked for it. So I'm a little confused.
5 Is this something that happens all the time where they do a
6 study after the fact?
7 ZONING EXAMINER: The drainage report I think is what
8 you're referring to. And that, that is common to do the
9 drainage report, although it would be - I, I could bring that up
10 as a question as to whether it's feasible to have the drainage
11 report more quickly. But I'm not sure at this point whether
12 the, the - since the drainage report would have to be - show
13 compliance with City standards whether it would really would
14 impact my recommen- -- my, my decision in this case.
15 MS. GLASS: Okay.
16 ZONING EXAMINER: So - but, yes. They, they often
17 have the drainage reports after a recommendation.
18 MS. GLASS: Well, it seems kind of silly, but okay.
19 ZONING EXAMINER: (Inaudible) they show compliance.
20 And if they didn't, they wouldn't be able to -

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1 MS. GLASS: Yeah.
2 ZONING EXAMINER: - go forward.
3 MS. GLASS: When they're saying 1.85 feet per year
4 where the water table goes down with a 50-lot subdivision, and
5 they gave their figures on that, and then you're putting in a
6 208 apartment complex, with the economy the way it is right now,
7 in 2007 when this originally went forward, 2007 was a long time
8 ago. Okay, the economy has changed, housing has changed.
9 Everything has pretty much changed.
10 Yet they keep bringing up this 1950's information, and
11 1960's information. This is 2013. Like we need more apartments
12 in a ranch-style, single-family home area that doesn't need
13 anymore loss of water. That doesn't need anymore traffic in the
14 area. That doesn't any added expenses to developers that - by
15 the way, on 22nd Street the development that started in 2008 has
16 been vacant and closed down since 2008.
17 You know, the apartment complexes that (inaudible)
18 constant availability, so let's go ahead and put in apartment
19 complexes. The foreclosures that have hit Tucson, Phoenix and
20 Arizona that make us whatever number in the United States that

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1 we are, we don't need more of this.
2 We don't need to lose more water because someone wants
3 apartments or whatever the case may be. That's all they're
4 trying to do to get this upgrade to a water system that works
5 perfectly fine. And, again, please do not approve this. Thank
6 you.
7 ZONING EXAMINER: Thank you. Ma'am.
8 MS. BENHASE: I'm Margaret Benhase again. I just have
9 something short. I talked to the manager of Arizona Assured
10 Water about a month ago on the telephone. He called me because
11 I had contacted him.
12 And he told me specifically that anytime there is a
13 plat change that whether it's houses or an apartment or
14 whatever, anytime a plat changes, the new developer has to apply
15 for Arizona Assured Water again. They can't use the old 50-plat
16 thing or, or, you know, whatever he was talking about. They
17 have to apply for a new one.
18 And then the other thing I have to say is when I read
19 the approval on the apartment complexes, one of the statements
20 on there that allows it to be approved is with water. So if

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1 they don't, you know, they have to get the water approved,
2 otherwise their approval for the building is null and void.
3 Like if you read it, you'll know what I mean. That's it.
4 ZONING EXAMINER: Thank you. Would you like to make
5 one comment? How about we make that - 'cause I may call Mr.
6 Bangs back up here, and
7 MR. MORITZ: (Inaudible)
8 ZONING EXAMINER: We'll just make that the last
9 comment.
10 MR. MORITZ: John Moritz again. Let's say they say
11 that it's going to happen anyway because it's C-1 zoning.
12 Sometime in the future that they're gonna need the water usage.
13 In this case, this is definitely and we've established this is
14 the, the size of this project is definitely tied to the
15 apartment complex. We know that.
16 So what would happen if this was denied the variance
17 based on - or denied what, what needs to be done to allow for
18 the water, the apartment complex, what happens to that C-1
19 zoning, or even all the property down along 22nd Street that,
20 that we're aware of, including the office zoning and the 32

1 homes, not 208 apartment complexes?
2 Well, that, that doesn't render that property useless.
3 There are lots of other things that might be more compatible
4 with the low density area like we have. For instance, a church
5 or something else that doesn't need as much water. Or even the
6 homes, again, that don't need as much water, that didn't require
7 the variance.
8 I think the, the only reason why they require this
9 variance is because of the massive amount of water that they're
10 preparing for the apartment complex and the other future
11 properties which there really aren't that many down 22nd Street
12 that would require that much water. Thank you.
13 ZONING EXAMINER: Thank you. I have two or three con-
14 -- well, more than that. But I have some concerns. One is I'd
15 like to read that water report. But I think more than that, I
16 need to contemplate the issue of what I can consider and what I
17 can't consider. And I think that Staff has played a cruel joke
18 on me for putting on one night two cases that bring up the
19 question of evidence I can consider. Doesn't really happen very
20 often.

1 In this case, it may be the issue of to what extent
2 this is the, the, the statements and testimony given to me
3 tonight, really are about the apartment complex as an apartment
4 complex, and not the issue of whether the strict standards that
5 I should apply in interpreting whether a special exception can
6 be granted to the well site apply.
7 So that's one thing that I need to consider, and I may
8 be constrained. I'd like the, the time to consider that and
9 weigh that. And I'm not sure that the five days that I have is,
10 is enough. But that's really the limited - I have, I think,
11 enough testimony and enough evidence on all these issues to
12 weigh those issues. But I'm not sure about that specific narrow
13 issue of, of what I can consider as relevant to this specific
14 application.
15 So I'm either gonna have a very intense five days or
16 I'm gonna continue this. And I want to invite Mr. Bangs up
17 reluctantly probably to reiterate maybe why I have a very narrow
18 scope rather than a wider scope in considering this special
19 exception. Is that a fair question?
20 MR. BANGS: Sure.

1 ZONING EXAMINER: Okay.
2 MR. BANGS: Mr. Kafka, I go back to the - where I
3 started. And that is the Land Use Code which is you're making a
4 decision based on it. Provisions which provide for this type of
5 special exception approval refer to it as an administrative
6 decision as opposed to those that go on to the Mayor and Council
7 for approval.
8 In that context, then the framework of the issues
9 created by the code, the findings that you're required to make,
10 the, the issues that those findings (inaudible) All five of
11 them that we've talked about before then become the focus of
12 your decision in my - and that constrains the decision. This is
13 not about the C-1 zoning on the apartment project. It's about a
14 water company's request to upgrade its facility.
15 And while that's, you know, obviously an unattractive
16 prospect to many of the people in this room, that's not the
17 issue. The issue is a request to upgrade the, the well site
18 facility.
19 And I don't really have much more to add to that to
20 tell you the truth. I think that's, I think you are governed by

1 the provisions of the Land Use Code and they set out what the
2 parameters of the decision-making process are.
3 And we would very much ask that in order to keep this
4 process going forward that you not delay your decision if at all
5 possible, and proceed on the normal time frame.
6 ZONING EXAMINER: I will. I'll proceed along the
7 normal time frame, close it tonight. But I am going to struggle
8 with the notion of what kind of discretion I have in this case.
9 So I know that that will be - I see a lot of people
10 raising their hands again, but I, I do want to sort of - you
11 know, actually, because I'm not going to continue it, I would
12 like to hear those, those statements, 'cause this is the last
13 chance in front of me that (inaudible)
14 All right. Let's start with you. Let's keep these
15 comments under a minute, okay, so that we can let people have
16 lots of commitments.
17 MS. BENHASE: Meg Benhase. I, I can understand what
18 the developer's saying, but also if this were so cut and dry, it
19 wouldn't be a public meeting. They wouldn't ask for, you know,
20 post it for the public to come and tell you their side of the,

1 their side of the story, how the public feels. So that's just
2 what I wanted to say.
3 ZONING EXAMINER: Okay. Thank you. Sir.
4 MR. PHELPS: Richard Phelps, 8916 East Harborage. To
5 respond directly to the question that you posed, I would submit
6 that if your decision on whether to grant the exception is based
7 in part, as I understand it to be, on the impact of current land
8 uses in the area, consistency with those current land uses, that
9 it's impossible to make that decision without reviewing it in
10 the context of the, the - that the proposed exception would
11 have, indeed, on those existing uses.
12 If you limit yourself simply to the four corners of
13 the walls around this tank, I don't believe respectfully that
14 you can adequately assess the impacts on existing uses in the
15 existing community. Thank you.
16 ZONING EXAMINER: Thank you.
17 MS. TURKIN: Hi. Kelly Turkin again. I just wanted
18 to reiterate what he said, this lovely gentleman said was that
19 we wouldn't be here and we wouldn't be asking for this well to
20 be changed if it weren't for the need for the apartments. And,

1 and he did say that, and that's why we're here.
2 We weren't opposed to housing, we weren't opposed to
3 other things. It's just a large, large apartment complex that
4 does not belong in this community. Thank you.
5 ZONING EXAMINER: Thanks. Sir.
6 MR. WHITE: Dave White, 8935 East 21st Street. I
7 think that sometimes there's a difference between the spirit of
8 the law and the letter of the law. And that's why everybody
9 came out tonight, because sometimes when it looks like the
10 letter of the law is going against you, you've gotta hear the
11 spirit because I think that our city, whom you represent, needs
12 to take into consideration the people who live in this
13 neighborhood and the way that they feel, because these folks are
14 - they don't live there.
15 And they're gonna finish this project and take their
16 check and walk away and not even think about us. But that's not
17 what we ask from you. We ask you to think about us, and that's
18 why we're here.
19 ZONING EXAMINER: Thank you.
20 MS. GLASS: Elizabeth Glass, 8756 East Harborage.

1 I just want to say one thing, that if the water company were
2 furnishing water to 50 households in Halcyon to, or another
3 development with 30 households, that would bring their number up
4 to 60 or 80. And this is well within their current capacity.
5 There, right now there is no current need with the way
6 the neighborhood is set up, even with some of the current
7 developments, for them to need this expansion. Thank you.
8 ZONING EXAMINER: Thanks. All right. Is that it?
9 All right. I want to thank everybody for showing up tonight.
10 I, I understand people are passionate, concerned, and
11 interested. And everybody advocating for their position has a
12 right to come forward and speak and disagree in, in - this is
13 what makes these public processes dynamic, and I do appreciate
14 that. And I appreciate the opportunity to hear it.
15 I'm gonna close Case No. SE-13-24, Halcyon Acres Annex
16 No. 2, and I should have a report prepared within five days.
17 That's a final report, right? This is - yeah, this is my, my
18 final decision. There's no recommendation to Mayor and Council.
19 So thank you very much.
20 (Case No. SE-13-24 was closed.)

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I hereby certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: 05/07/13

KATHLEEN R. KRASSOW - Owner
M&M Typing Service

Exhibit J

LINE EXTENSION AGREEMENT

THIS AGREEMENT, made this 20th day of July, 2012, by and between Halcyon Acres Annex No. 2 Water Co., Inc., an Arizona corporation ("Company") and MC Realty Advisors, LLC, an Arizona limited liability company ("Applicant");

WHEREAS, Company holds a Certificate of Convenience and Necessity from the Arizona Corporation Commission ("ACC") to provide water service to a specified area including what is currently legally described as the Presidio Trail subdivision of Pima County recorded at Book 63 of Maps and Plats at Page 67 of Pima County Records, consisting of Lots 1 – 50 inclusive along with Common Areas A1, A2, A3, B, C1 and C2 (the "Property");

WHEREAS, Applicant intends to develop the Property for the applicant's profit a project known as The Place at Presidio Trails apartment complex, consisting of 208 apartment units and has requested Company to provide water service to the Property; and

WHEREAS, certain Water-Related Facilities must be designed, constructed, administered, installed and connected to Company's system in order to permit Company to deliver adequate water service to the Property; and

WHEREAS, Applicant is willing to finance, design, install and construct said Water-Related Facilities (including the Common Facilities and Underground Facilities as defined in Section 1 below), as provided herein subject to Company's approval of such design and construction, and Company's commitment to provide domestic water utility services, but not fire flow, to the Property;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and as a predicate to the Property receiving water service, the parties hereby agree as follows:

1. Facilities to be Constructed: This Agreement governs the construction, installation and financing of the Water-Related Facilities set forth in the Water System Analysis for the Place at Presidio Trails Apartment Complex Properties prepared by Westland Resources, Inc., and signed August 17, 2011 as attached with an updated opinion of cost as Exhibit A and incorporated herein by this reference ("Common Facilities") and certain other facilities, including mains to serve the lots on the Applicant's property, which will be set forth on plans to be prepared by Rick Engineering (the "On Site Facilities"), incorporated herein by this reference as Exhibit B. The Common Facilities and the On Site Facilities may be referred to herein collectively as "Water Related Facilities". Final engineering plans for the Water-Related Facilities ("Plans") shall be prepared by registered professional engineers and shall be submitted for approval by Company, the ACC, the Arizona Department of Environmental Quality ("ADEQ") or its delegatee and/or such other governmental agency, if any, having authority to review and approve the engineering plans. After company approval, no modifications or further amendments to the Plans shall be permitted without written authorization of Company. The facilities to be constructed pursuant to the Plans are hereinafter referred to as the "Water-Related

Facilities." Any additional lines, or water facilities necessary to provide adequate water service to the Property, or any portion thereof, are beyond the scope of this Agreement and will be the subject matter of separate and distinct agreements.

2. **Applicant to Construct and Pay:** Applicant shall design, construct and install the Water-Related Facilities and shall pay all of the costs related thereto and/or arising directly or indirectly from this Agreement or any undertaken in the performance hereof, including, but not limited to, the costs of engineering, computer modeling analysis, materials, labor, transportation, equipment, known or unknown, present or future regulatory fees, special assessments, excise charges, taxes (excluding property taxes and income taxes attributable to value of improvements) or surcharges, regulatory fees, necessary permits, easements, inspections, administrative overhead, attorney's fees, approvals, testing, correction, insurance and bonds.

3. **Time of Payment:** Applicant, prior to Company's written acceptance of the Water-Related Facilities, shall pay all costs incurred by Applicant with any third party in the performance of this Agreement. Prior to Company's written acceptance of the Water-Related Facilities, but not later than thirty (30) days after completing construction, Applicant shall pay Company fifteen (15%) of the actual cost of construction of the Water Related Facilities set forth in Paragraph 4 below as and for Company's cost of engineering, computer modeling analysis, inspection, administrative overhead, and attorneys' fees incurred in connection with this Agreement. Applicant has already paid a \$1,500.00 pre-application fee, which is hereby acknowledged. Applicant had previously paid a further fee of \$3,500.00 for a total payment as of the execution of this Agreement of \$5,000.00. Applicant shall make an interim payment of \$10,000.00 on August 1, 2012. All application fees and interim payments shall be deducted from the percentage fee set forth above. All other costs payable by Applicant to Company hereunder shall be due and payable the later of: a) prior to the Company's written acceptance of the Water-Related Facilities, or b) within fifteen (15) days of receiving a bill therefore. Interest shall accrue on any unpaid balance at the rate of 1.5% per month. All sums paid by the Applicant pursuant to this Paragraph 3 and supported by documentation as required by Paragraph 5, shall be deemed advances-in-aid-of-construction refundable as set forth in Paragraph 6 hereof.

4. **Actual Cost Shall Govern:** The estimated total cost of the Surface Facilities identified in the Westland Report is Five Hundred Five Thousand Four Hundred and Twenty Five United States dollars (\$505,425.00) as reflected on that Preliminary Opinion of Probable Construction Cost prepared by Craig Cannizzaro on or about June 27, 2012 and as reflected in part on Exhibit A. In addition, Applicant shall be responsible for the estimated cost of (\$131,380.00) for Applicant's upgrades and the cost of the On Site Facilities and are constructed solely for or on Applicant's property, which is reflected on Exhibit B. Applicant acknowledges the estimates are non-binding and hereby agrees to pay the actual cost of the Water-Related Facilities.

5. **Documentation:** Applicant shall, as a pre-condition of acceptance of the Water-Related Facilities by Company and not later than one hundred twenty (120) days after completing construction, furnish Company with:

- a) copies of all bills, invoices and other statements of expenses incurred by Applicant, covering all costs of materials, equipment, supplies, construction and installation of the Water-Related Facilities;
- b) lien waivers and releases from contractors, subcontractors and vendors for materials, labor, equipment, supplies and construction included in Water-Related Facilities and shall transfer all warranties to the Company;
- c) receipts, specifying exact amounts or payments in full by Applicant to all contractors, subcontractors or vendors for all materials, equipment, supplies, labor and other costs of construction of the Water-Related Facilities;
- d) "as-built" drawings certified as to correctness by an engineer registered in the State of Arizona and approved by Company (whose approval shall not be unreasonably withheld), and showing the location and respective sizes of Water-Related Facilities; and
- e) all easements, bills of sale, deeds and other evidences of ownership, and/or right to operate, maintain, repair and replace the Water-Related Facilities reasonably requested by Company.

Applicant and Company covenant to work cooperatively to pre-approve the form of such easements, bills of sale, and other legal documents in advance to minimize the potential that Applicant might be required to duplicate its efforts.

6. Return of Advance: The cost of construction and installation of Water-Related Facilities advanced by Applicant pursuant to this Agreement and evidenced by invoices furnished to Company pursuant to Paragraph 5 hereof, is subject to refund by Company to Applicant. Company shall make refunds annually on or before August 31, for the preceding July 1, through June 30 period. The amount to be refunded annually shall be ten percent (10%) of revenues (excluding all gross receipts collected as service charges, service line and meter installation charges, sales taxes, franchise fees and/or any other assessment, fee, tax or charge imposed by a state, federal or local governmental body or pursuant to a cost adjustment mechanism approved by the ACC) derived from the provision of water served from each customer service line leading up to and taken from water mains installed by Applicant pursuant to this Agreement.

Refunds for revenues received from customers receiving water from the facilities constructed under this Agreement shall be payable for a period of ten (10) years commencing on the first day of the month following Company's Acceptance of the Water Related Facilities. In no event shall the funds paid hereunder exceed the total amounts paid by Applicant as advances-

in-aid-of-construction pursuant to this Agreement. Any balance remaining at the end of each ten (10) year period shall become non-refundable unless the refund period is extended from year to year at the sole option of Company. No interest shall be paid on any amount advanced by Applicant pursuant to this Agreement.

7. **Company's Right of First Refusal:** Before selling or transferring the refund obligation of Company under this Agreement, Applicant shall first give Company, and its heirs, successors and assigns, reasonable opportunity to purchase the same at the same price and upon the same terms as contained in any bona fide offer which Applicant has received from any third person or persons which Applicant may desire to accept.

8. **Governmental Approvals:** Prior to commencing construction of the Water-Related Facilities, Applicant shall pay for and provide to Company all requisite permits, highway construction permits, zoning and other governmental approvals, as required, and necessary to construct the Water-Related Facilities.

9. **Provision and Use of Easements:** Applicant shall, at no cost to and in a form reasonably acceptable to Company, furnish Company any and all easements and rights-of-way reasonably necessary to insure the proper provision of utility service by Company, as determined in the reasonable discretion of Company, using the requirements of Tucson Water as the standard. In addition, Company shall have the right to use any of the existing or future dedications, easements, or recorded rights-of-way on the Property in furtherance of the proper provision of utility service by Company.

10. **Provision and Use of Well sites, Booster Sites and Storage Tank Sites:** Applicant agrees, at no cost to and in a form reasonably acceptable to Company, to establish and convey to Company the wellsite(s), booster site(s), and storage tank site(s), if any, that Company, in its reasonable discretion, based upon good engineering practice, deems necessary for the location of the Water-Related Facilities. It is understood Company shall have the right to reject any site offered or permit condition which Company and/or Company's engineers, in their reasonable discretion, do not feel appropriate or suitable for Company's needs and, in such circumstance, Applicant shall be obligated to establish and convey a replacement site therefore suitable to Company, at no cost to Company. Conveyance of such site(s) must be by warranty deed and free and clear of all liens and encumbrances whatsoever.

11. **Obligation to Commence:** Applicant shall commence construction of Water-Related Facilities no later than December 1, 2012, and complete construction by December 1, 2103. Should construction not commence and be completed within such period, or such longer period as mutually agreed to in writing, subject to extensions of time for delays beyond the reasonable control of Applicant, or if Applicant fails to pursue completion with reasonable diligence as reasonably determined by Company, Company may cancel this Agreement upon ten (10) days written notice to Applicant. In the event the Agreement is canceled, neither party hereto shall have any further obligations to the other hereunder, except that Applicant shall be responsible and pay to Company an amount equal to the greater of the costs actually incurred by Company, including, but not limited to, engineering and legal fees and

costs incurred in the preparation of this Agreement, or the payments paid by the Applicant to the Company at the time of any said cancellation.

12. **Company's Right to Stop Work:** If Applicant materially fails to perform in accordance with this Agreement, Company, by a written order signed by a duly designated representative of the Company, may order Applicant to stop, and Applicant shall stop construction and installation of the Water-Related Facilities, or any portion thereof, until the cause for such order has been eliminated.

13. **Contractor's License:** All construction, installation and connection of Water-Related Facilities shall be done by a contractor having a valid contractor's license issued by the State of Arizona Registrar of Contractors encompassing the work to be performed.

14. **Construction Standards:** The size, design, type and quality of materials shall be in accordance with good utility practices, the requirements of Company (as identified on or before the date of this Agreement), the rules, regulations, orders and requirements of the ACC, ADEQ and any other public agency having jurisdiction thereover, including, but not limited to, traffic control, compaction, safety, pavement removal and replacement, sloping, shielding, shoring, OSHA regulations and Arizona Department of Health Services Bulletins No. 8 and No. 10. Additionally, all of said plans and specifications shall meet or exceed the standards and specifications of Tucson Water, and shall be approved in writing by Company before being submitted to ADEQ, or its designee, or the Arizona Corporation Commission ("ACC") for approval. Approval by Company will not be unreasonably withheld or delayed. Water-Related Facilities will be designed and constructed with sufficient capacity to accommodate the water service requirement of the Property without adversely impacting water service to other customers of Company. Upon the request of Company, the Water-Related Facilities or any portion thereof, shall be oversized, provided Company shall be responsible for and pay a share of the increased expenses of oversizing on a pro-rata cost basis.

15. **Inspection and Testing:** Applicant shall comply with the inspection and testing requirements of Company and any governmental agency having jurisdiction over the construction, installation and connection of the Water-Related Facilities. Any inspection or testing requirement imposed by Company shall be reasonable and shall not cause Applicant unwarranted delays in the ordinary course of construction. Unless otherwise agreed, Applicant shall notify Company or Company's designated Engineer that Water-Related Facilities are ready for inspection and/or testing, prior to covering or otherwise limiting access to the facility and when inspection or testing is otherwise required. Company, or its designated Engineer shall make an initial inspection of the facility within forty-eight (48) hours after being so notified, excluding weekends and holidays. Inspection or testing by Company shall in no way relieve or limit Applicant's responsibility and liability for construction and installation of Water-Related Facilities in accordance with the terms of this Agreement.

16. **Acceptance of Facilities:** No Water-Related Facilities will be deemed accepted unless:

- a) accepted in writing by Company; or

- b) documentation of conveyance has been delivered to and accepted by Company.

Company shall not unreasonably refuse to accept Water-Related Facilities when offered by Applicant; provided, however, Company has no obligation to accept Water-Related Facilities, or any portion thereof, if:

- a) not constructed in conformance with the Plans;
- b) determined to be unsatisfactory in any material respect upon inspection or testing;
- c) not paid for in full;
- d) lien or encumbered in any way;
- e) not located on Company property, easement or public right-of-way; or
- f) not supported by proper documentation.

Within thirty (30) days of Applicant tendering the facilities for acceptance, Company shall provide written notification of any defects and items left to be completed. Applicant shall promptly correct all defects and complete all items so identified, which Company shall then review and provide its written acceptance (assuming the defects have been corrected) within fourteen (14) days of Applicant tendering such corrections.

17. **Temporary Use of Facilities:** Applicant consents to Company's use of all or any portion of the Water-Related Facilities, at reasonable cost to Applicant and at no cost to Company for a period not to exceed thirty (30) days, prior to formal acceptance thereof. Any water service provided by Company to the Property prior to written acceptance of the Water-Related Facilities as provided herein is provided on a temporary basis only, subject to termination on ten (10) days written notice that temporary service will no longer be available until Applicant meets all conditions precedent to acceptance of the Water-Related Facilities.

18. **Risk of Loss:** All risk of loss shall be with Applicant until written acceptance by Company of the Water-Related Facilities. Applicant shall repair or cause to be repaired promptly, at no cost to Company, all damage to the Water-Related Facilities caused by construction operations until all construction under this Agreement has been completed and accepted in writing by Company.

19. **Performance Bond and Labor and Material (Payment) Bond:** Upon Company's request, Applicant shall provide Company with Performance and Payment Bonds for 100% of the estimated costs of the Water Related Facilities, as set forth on Exhibit A. The Bond shall be executed by a Surety holding a Certificate of Authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance. The Bond shall have attached thereto a certified copy of the Power of Attorney for the signing official. The bonding company shall be rated "Best Rated A" or better by the A.M. Best Company and shall be otherwise reasonably acceptable to Company.

20. **Title to Property-in Utility:** The Water-Related Facilities constructed pursuant to this Agreement shall become upon acceptance thereof by Company, and shall

remain, the sole property of Company without the requirement of any written document of transfer to Company. Applicant shall not have any further right, title, ownership or ownership interest herein whatsoever, except for the right to receive refunds of the particular advance-in-aid-of-construction pursuant to the method herein described. However, Applicant shall furnish any document pertaining to ownership and title as may be requested by Company including documents which evidence or confirm transfer of possession to Company of good and merchantable title free and clear of liens, or which contain provisions for satisfaction of liens by Applicant.

21. **Warranty:** Unless otherwise provided in Exhibit A, Applicant warrants to Company that all materials and equipment furnished under this Agreement will be, new, and that the Water-Related Facilities will be of good quality, free from faults and defects. Applicant further guarantees the Water-Related Facilities for a period of two (2) years from the date of their acceptance by Company. Should any portion of the Water-Related Facilities need replacement or repair within two (2) years from the date of completion due to construction methods or material failure, Applicant shall replace such portion of the Water-Related Facilities at no cost to Company. If Applicant fails within reasonable time to replace or repair any portion of the Water-Related Facilities deemed to be needed, Company may cause said Water-Related Facilities to be replaced or repaired and Applicant agrees to pay all costs incurred therein plus a 10% percent administration fee. Any portion of the Water-Related Facilities not conforming to the Agreement, including substitutions not properly approved and authorized, may be considered defective. If required by Company, Applicant shall furnish satisfactory evidence as to the kind and quality of materials and equipment used on the Water-Related Facilities.

22. **Insurance:** Applicant shall secure and maintain until acceptance of the Water-Related Facilities, the following insurance in the name of Applicant, naming Company as additional insured with respect to claims which may arise out of or result from Applicant's acts, operations or negligence or those of its subcontractors, or anyone directly or indirectly employed by any of them including officers, employees, agents or representatives for matters related to this Agreement. The coverage shall be provided on an "occurrence" basis rather than a "claims made" basis, shall be provided without offset against Company's existing insurance and provide for a minimum of thirty (30) days notice to Company prior to cancellation, reduction in coverage or other substantial modification. Applicant shall provide a Certificate of Insurance which sets forth the following minimum amounts and types of coverage:

TYPE OF COVERAGE

AMOUNT NO LESS THAN

Workers' Compensation

Statutory

A. Employers Workers' \$100,000 each accident

Compensation Liability

\$100,000 disease each employee

\$500,000 disease aggregate

Commercial General Liability
(including contractual
liability for this Contract;
broad form property damage;

\$1,000,000 per occurrence

\$2,000,000 aggregate combined
single limit

completed operations; and
explosion, collapse and
underground coverage)

Vehicle Liability
(including owned, hired and limit
non-owned coverages)

\$1,000,000 combined single

Applicant shall submit to Company proof of the required insurance prior to commencing construction of the Water-Related facilities pursuant to this Agreement and/or at such other time(s) as deemed appropriate by Company. Applicant shall obtain the above described insurance from insurance companies which are duly authorized to issue such policies in the State of Arizona, "Best Rated A" or better than the A.M. Best Company, and otherwise acceptable to Company. Applicant shall maintain such insurance coverage until all the Work has been completed and the Water-Related Facilities has been accepted in writing by Company.

Company shall not be obligated to review any of the Applicant's Certificates of Insurance, insurance policies or endorsements or to advise Applicant of any deficiencies in such documents and any receipt of copies or review by Company of such documents shall not relieve Applicant from or be deemed a waiver of Company's right to insist on strict fulfillment of Applicant's obligations under this paragraph.

23. Protection of Persons and Property: Applicant and its employees, officers, agents, contractors, subcontractors, heirs and assigns shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic, and to avoid inconveniences, discomfort, loss damage and injury to persons and property, including the provision of adequate dust control measures during the construction, installation or connection of the Water-Related Facilities. All obstruction to traffic shall be guarded. Neither Applicant nor any subcontractor shall trespass upon private property. Applicant shall protect against injury or damage to pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences, or other structures or property, public and/or private, encountered in the performance of this Agreement. Applicant shall be responsible and liable for any injury or damage to persons or property, directly or indirectly, resulting from the actions or inactions of Applicant, its officers, directors, agents, employees and representatives; including contractors completing the Water-Related Facilities; excepting injury or damage arising from the negligence of public enemy, inevitable accidents, fire, explosions, strikes, riots, war or any other act or thing reasonably beyond its control or incident to interruptions necessary for repairs or changes in Company's production, storage, transmission or distribution facilities.

1. Indemnification:

- a) Applicant shall indemnify and hold harmless Company, its officers, directors, members, agents and employees from and

against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Applicant, its agents, servants, employees, contractors or subcontractors in the execution of Applicant's obligations under this Agreement or in connection therewith. In case any suit or other proceeding shall be brought on account of Applicant's action or inaction, Applicant will assume the defense at Applicant's own expense and will pay all judgments rendered therein;

- b) Company shall indemnify and hold harmless Applicant, its officers, directors, members, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Company, its agents, servants, employees, contractors or subcontractors in the execution of Company's obligations under this Agreement or in connection therewith. In case any suit or other proceeding shall be brought on account of Company's action or inaction, Company will assume the defense at Company's own expense and will pay all judgments rendered therein;
- c) The provisions of this Paragraph shall survive termination of this Agreement.

24. **Water Service:** Upon Applicant complying fully with this Agreement, including receiving Company's written acceptance of the Water-Related Facilities, and obtaining all requisite governmental approvals to sell lots within the Property, Company agrees to offer domestic water service, not fire flow, to the Property. Water service shall be offered in accordance with Company's Articles of Incorporation, By-laws, rules and regulations, and under the tariffs and rules and regulations approved by the ACC, as amended from time to time. This Agreement shall not preclude Company from requiring applications for water service to be executed and complied with prior to the actual delivery of water service to individual lots within the Property.

COMPANY EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION TO PROVIDE WATER AT A SPECIFIC PRESSURE OR GALLONS-PER-MINUTE FLOW RATE AT ANY FIRE STANDPIPE, OR FIRE HYDRANT, OR FOR FIRE PROTECTION SERVICE. FIRE PROTECTION SERVICE SHALL NOT BE PROVIDED BY THE COMPANY. THE COMPANY WILL NOT BE LIABLE FOR ANY INJURIES OR DAMAGES ARISING FROM ANY FIRE FLOW RELATED ISSUES

with a faxed and mailed copy to:

Gregory E. Good, Esq.
Good Law, P.C.
3430 E. Sunrise Drive, Ste. 170
Tucson AZ 85718
Facsimile: (520) 547-0394

or to such other addresses or addressees as Company may advise Applicant in writing.

28. **Assignability:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns and either party may record the Agreement with the County Recorder's office in the county where the Property is located. However, the Company retains the right reasonable right of approval over any assignment, and Applicant shall only assign its rights, obligations and interests in this Agreement to a successor-in-interest that capable of and agrees in writing to assume all of Applicant's obligations to Company under this Agreement.

29. **Rights and Remedies:** The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available at law or equity. No action or failure to act by Company or Applicant shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any action or failure to act constitute an approval of or acquiescence in any breach, except as may be specifically agreed in writing.

30. **Litigation:** Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damage claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys fees shall be paid to the prevailing party.

31. **Entire Agreement/Time of the Essence/Waiver:** This Agreement sets forth the full and entire agreement of the parties and it may only be altered, amended or supplemented in writing. This Agreement shall be governed by the laws of the State of Arizona. Time is of the essence in performing all obligations hereunder. Waiver of a breach of any term, condition or covenant of this Agreement by any party shall be limited to the particular instance and shall not be deemed to waive future breaches of the other party of the same or other terms, conditions or covenants.

32. **Counterparts:** This Agreement may be executed in any number of counterparts, and all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts *shall* be deemed an original hereof.

Company shall have no obligation whatsoever to provide service to the Property or any portion thereof, unless and until: Applicant has paid the full cost of the Water-Related Facilities as required hereunder; Applicant has secured all governmental approvals required hereunder or as a condition to the sale and/or occupancy of the subdivided lots; construction of the Water-Related Facilities has been completed and accepted in writing by Company, and Applicant has paid all fees, charges, and deposits authorized to be charged by the ACC including, but not limited to, meter and service lines which are not a part of the Water Related Facilities covered by this Agreement.

Following the execution of this Agreement, in the event that Company later elects to seek the approval of new hook-up fees or other tariffs applicable broadly to all new customers of Company (but not including an increase in water rates), Company agrees that the obligation to pay such fees shall not apply to customers located within the Property.

25. **Conservation Requirement:** To the extent Applicant contracts for or constructs residences or other water consuming facilities on the Property, Applicant shall make its best efforts to ensure that construction of said residences and facilities incorporates the latest technologies in water conservation consistent with the economic investment therein and limits water using features. Applicant shall take all reasonable steps to limit total water usage on the Property, and on individual lots and facilities within the Property a) to levels at or below the gallons per capita per day standard recognized by the Arizona Department of Water Resources for Company and b) in accordance with any other water use standard applicable to Company and set by law, regulation, order or tariff.

26. **Non-Agents:** It is agreed that Company is not an agent for Applicant and shall not incur any costs or expenses on behalf of Applicant and that Applicant is not an agent of Company and shall not incur any costs or expenses on behalf of Company.

27. **Communication:** Communications hereunder shall be sent to Applicant addressed as follows:

MC Realty Advisors, LLC
c/o MC Companies
2910 North Swan Road, Suite 204
Tucson, AZ 85712

or to such other addresses or addressees as Applicant may advise Company in writing, and to Company at:

Gene Wilcox, President
Halcyon Acres Annex NO. 2 Water Co., Inc.
8715 E. 20th
Tucson, AZ 85710

33. **Effective Date:** This Agreement shall have no force or effect whatsoever and shall not be binding upon Company or Applicant until such time as it is executed by all parties and approved by the ACC.

34. **Authority to Execute:** Each party warrants and represents that it has lawful authority to execute this Agreement and to perform all acts required hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

Halcyon Acres Annex No. 2,
an Arizona corporation

MC Realty Advisors, LLC, an Arizona
limited liability company

By: W. Gene Wilcox
Its PRESIDENT HALCO

By: [Signature]
Its Member

Approved: _____
Utilities Division:
Arizona Corporation Commission

Date: 7/23/12

ACKNOWLEDGEMENTS

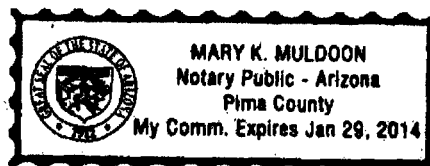
STATE OF ARIZONA)
 : ss.
COUNTY OF Pima)

On this 31st day of July, 2012, before me, the undersigned, a Notary Public, personally appeared W. GENE WILCOX who acknowledged himself to be the PRESIDENT of Halcyon Acres Annex No. 2 Water Company, an Arizona corporation, and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires: 01/29/2014

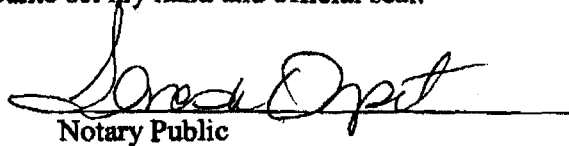
Mary K. Muldoon
Notary Public



STATE OF ARIZONA)
 : ss.
COUNTY OF PIMA)
 maricopa

On this 23 day of July, 2012, before me, the undersigned, a Notary Public, personally appeared Boss McCallister who acknowledged himself to be the member of MC Realty Advisors, LLC, an Arizona limited liability company, and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

My Commission Expires: 12/17/2013

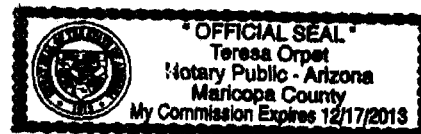


EXHIBIT “A”

HALCYON ACRES
WATER SYSTEM ANALYSIS
FOR THE PLACE AT PRESIDIO TRAILS
APARTMENT COMPLEX

Prepared for:

MC COMPANIES
2421 E. 6th Street, Suite 2
Tucson, Arizona 85719

Prepared by:

Westland Resources, Inc.
Engineering and Environmental Consultants
4001 E. Paradise Falls Drive
Tucson, Arizona 85712
(520) 206-9385



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FIGURES (follow text)

Figure 1. Existing and Proposed Infrastructure

APPENDICES (follow text)

Appendix A. Opinion of Probable Construction Cost

SECTION 1 - INTRODUCTION

The purpose of this water system analysis is to determine the required water system facilities for The Place at Presidio Trails, a planned multi-family residential project within the Halcyon Acre Annex No. 2 Water System (Halcyon Acres). This report will present a concept for water service for the development, including water usage projections and facility sizing and location. Halcyon Acres water system is located within Section 15, Township 14 South, Range 15 East. The water system is currently comprised of approximately 42 lots at buildout in a large-lot subdivision, plus two other platted subdivisions - Camino Seco Village Lots 1 through 35, and Presidio Trails Lots 1 through 50. Existing and proposed infrastructure are shown on Figure 1. In addition, two of the previous subdivision lots have been recently developed for a new vocational school project for the Pima County Joint Technical Education District (JTED). Upgrades to the water system were previously planned and designed for the two subdivisions, although the subdivisions and associated water system upgrades were never constructed. The previously platted Presidio Trails Lots 1 through 50 subdivision is now planned for redevelopment, and the new project, The Place at Presidio Trails, will include a 208-unit apartment complex with a pool and recreation center. The total buildout of the water system will therefore include approximately 77 single-family homes, the JTED site, 208 apartment units and associated uses.

SECTION 2 - EXISTING FACILITIES

The existing water company obtains source water from the Halcyon Acres Well Site located on Halcyon Acres Annex No. 2 Lot 80, north of 21st Street and east of Camino Seco. The well is currently equipped with a 30 horsepower (hp) Goulds pump and motor. The pump is currently reported to provide approximately 130 gallons per minute (gpm), although the well is believed to be capable of providing approximately 165 gpm peak capacity. The current well pump includes 12 stages set at 488 feet below ground surface. The static water level is 371 feet. The estimated drawdown is 13 feet, which will need to be confirmed by sounding. The existing pump was previously reported to achieve 150 gpm with a total dynamic head (TDH) of approximately 600 feet. The well casing is 12 inches and the existing casing has a total depth of 688 feet below ground surface. The existing water facilities will need to be upgraded to serve the demands of the new developments.

SECTION 3 - WATER SYSTEM CRITERIA

The main goal of this water system analysis is to determine the required water system facilities to adequately serve the new apartment complex project. The required facilities are determined based on a variety of engineering criteria, as well as operational criteria. The water system facilities reviewed include source, reservoirs, booster stations, and pipelines. Peak daily demand (PDD) requirements were used to review the flows to be transported through the system, to determine the required source capacity and demands for booster station upgrades. Arizona Department of Environmental Quality (ADEQ) sizing criteria was used to determine reservoir and pipeline sizing. Further information regarding the engineering criteria used to determine sizing of the facilities is presented below.